GAHC020006342024 2025:GAU-NL:547

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

Case No. : Crl. Pet./49/2024

SRI BIRJU BORA
S/O LATE BASARAM BORA
HOUSE NO. 175
PATHARQUARY
NEAR HINDUSTAN COLLEGE
P.S. SATGAON, DIST. KAMRUPO (M0
PIN-781171 ASSAM

VERSUS

THE STATE OF NAGALAND AND ANR
NAGALAND KOHIMA

2:MRS. BIZILI MECH
W/O SONJOY MECH
R/O H.NO. 127
KUSHIABILL
DIMAPUR NAGALAND
79711

Advocate for the Petitioner : GUNAMANI SARMA, VIKRAMJEET DEVNATH,PAKINRICHAPBO,NAYANJIT KONWAR

Advocate for the Respondent : P.P, NAGALAND,

BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

O R D E R

17.11.2025

Heard learned counsel for the petitioner, Mr. Gunamani Sarma. Also heard learned Public Prosecutor, Ms. S. Mere appearing for the State respondents.

2. In the present application under Section 528 of the BNSS, 2023, the case of the petitioner is that an FIR had been lodged by the complainant/respondent no. 2 on 16.08.2024, alleging that the petitioner had taken a loan from her in the year 2021 for a sum of Rs. 5 Lakhs and an agreement was also entered into between the parties dated 23.06.2021, wherein it was agreed that the borrower/petitioner shall repay the amount within a period of 3 (three) years, and that the borrower shall repay an amount of Rs. 25,000/- monthly. The FIR also states that after the expiry of the period as set out in the agreement the complainant had approached the petitioner several times to repay the said amount; however, the petitioner had not complied with the request nor has he made any efforts to repay the said amount. It was stated that she even approached him personally at his hometown; however, he has restrained himself from any possible communication from the complainant and was ignoring her calls and requests to repay the said amount. In view of the same, the FIR was lodged and the case was registered at the Dimapur East PS, being Case No. 0137/2024 under Section 318(4)/316(2) of the BNS.

3. The learned counsel for the petitioner submits that the complainant is

the cousin sister of the petitioner's wife and they had a very close relationship and due to the relationship between the parties, the amount of Rs. 5 Lakhs had been loaned to the petitioner. It is also stated that after the commencement of the agreement, the petitioner started to return the said amount in installments as per the terms of the agreement and he has also returned an amount of Rs. 2,35,000/- till date. The copies of the bank statements have been enclosed in the petition as Annexure-5 Series.

4. The learned counsel for the petitioner also states that the case is purely of civil nature as there is an agreement between the parties that in case of failing to repay the borrowed money the respondent no. 2 may file Money Suit or file complaint before the competent authority. However, the respondent 2/complainant has approached the police in order to harass the petitioner. It is further submitted that from the facts and circumstances as stated above, there is no element of criminal nature in the present case and the case has been wrongly registered against the petitioner.

5. Learned counsel has relied on the case of ***Pran Jyoti Bhuyan Versus State of Assam And Another*** reported in ***2014 (1)GLT 887***. Referring to the above Judgment, the learned counsel submits that in the aforementioned case, the Court had held that an offence of cheating cannot be made out unless the following ingredients are satisfied:

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

(ii) Fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

6. Relying on the above Judgment, the learned counsel submits that even in the present case, there is no ingredient of deception or making false or misleading representation and further there is no ingredient of fraudulently or dishonestly inducing the complainant to loan the said amount of Rs. 5 Lakhs. It is also stated that there is no ingredient of cheating or dishonestly inducing delivery of property in order to satisfy the ingredients of Section 318(4)/316(2) of the BNS.

7. Learned counsel also submits that the complainant in the FIR has only stated that the accused/petitioner has not repaid the loan as per the terms made in the agreement and, therefore, subsequent refusal to pay the balance amount does not satisfy the ingredients of cheating inasmuchas dishonest intention at the time of transaction is lacking. An offence of cheating would be constituted only when the accused had dishonestly made a promise or representation at the time of the transaction. However, in the present case, there is no statement in the FIR that the petitioner had dishonest or fraudulent intention at the time when the loan was advanced.

8. In view of the submissions made hereinabove, the petitioner prays that the present petition may be allowed and the proceedings of the GR Case No. 423/2024 may be quashed and set aside.

9. Learned Public Prosecutor, Ms. S. Mere appearing for the State respondent has submitted that the Charge-Sheet dated 13.06.2025 clearly shows that the ingredients of Section 318(4)/316(2) BNS are present in the instant case. As per the Charge-Sheet it has been shown that on expiry of the three years period, the complainant had approached the petitioner several times and also in person to repay the said amount. However, instead of paying back the money, the petitioner started to threaten her and had stopped responding to her calls. The complainant further stated before the investigating agency that her daughter is undergoing treatment for a rare medical condition and that she is in urgent need of the money. However, all her efforts had been in vain and, therefore, she is seeking justice with the help of police. Learned Public Prosecutor also submits that the investigating authorities had travelled to Moran Town in Dibrugarh, Assam, where the petitioner resides and on 29.08.2024 they had gone along with local police to the residence of the petitioner/accused. However, upon reaching the place, the arrest was resisted by the family, and while they were distracted by the petitioner's wife, the petitioner/accused absconded from the place. Efforts were made to trace him through CDR and LBS; however, he could not be traced as his mobile was switched off and inactive. Ultimately, the petitioner approached this Court and obtained anticipatory bail and only thereafter the petitioner/accused appeared before the investigating authority and recorded his statement. During investigation, the petitioner/accused admitted that the complainant is his wife's cousin sister and that he had borrowed an amount of Rs. 5 Lakhs in the year 2021 from the complainant, which was to be repaid in three years' time. The petitioner

had also admitted that he repaid Rs. 1,20,000/- in small installments. However, he has not been able to repay the remaining amount due to financial constraints, however, he is trying to make arrangements from different sources to repay the loan and that he will start paying Rs. 50,000/- every month until the amount of Rs. 5 lakhs is repaid in full.

10. The learned Public Prosecutor, therefore submits that in view of the above observations made in the Charge-Sheet, a *prima facie* case under Section 318(4)/316(2) BNS has been established against the petitioner/accused and, therefore, the trial should be allowed to continue in the interest of justice.

11. The respondent no. 2/complainant has not entered appearance. This Court, vide Order dated 13.05.20215 has observed that notice on respondent no. 2 has been served through the Officer-in-Charge of the concerned Police Station and a receipt dated 24.04.2025 had been produced by the Public Prosecutor and, therefore, notice on respondent no. 2 was deemed served. Inspite of notice, the respondent no. 2/complainant has chosen not to contest the case.

12. Section 318(4) of the BNS deals with the offence of cheating. The key ingredients of Section 318(4) BNS is that the accused must deceive the victim through a false representation or concealment of facts. The deception must be used to dishonestly or fraudulently induce the victim to act in a certain way and the victim must be induced to deliver any property to any person or to consent to any person retaining any property. Accordingly, this Court is of the view that there has to be an element of deception and inducement on the part of the accused. And further the

deception must have led the victim to deliver property in a way he otherwise would not have.

13. Section 316(2) BNS describes the offence or criminal breach of trust. In order to make out the offence of criminal breach of trust, the accused must have given possession or control of property and the accused must have dishonestly used the property for his own gain. The dishonesty can occur after the initial entrustment.

14. In the present case, it is seen that the agreement which was entered into between the complainant and the petitioner on 23.06.2021 does not reveal any ingredient of Section 318(4) BNS or 316(2) BNS. The instant case is purely of civil nature and there is only a breach of the agreement dated 23.06.2021. As it was held in the cited case of *Pran Jyoti Bhuyan (Supra)* the subsequent refusal to pay the balance amount does not satisfy the ingredients of cheating in as much as dishonest intention at the time of initial transaction is lacking. From the available records, this Court has not been able to find that the accused/petitioner had any fraudulent or dishonest intention at the time of entering into the agreement dated 23.06.2021. Be that as it may, the petitioner/accused has already paid back an amount of Rs. 2,35,000/- to the complainant.

15. In view of the above discussions, this Court is of the view that no criminal liability can be fastened upon the petitioner under Section 318(4) BNS or 316(2) BNS. Resultantly, the petition is allowed. The impugned FIR dated 16.08.2024 and the Dimapur East PS Case No. 0137/2024 is quashed and set aside. Resultantly, the proceedings of the GR case No. 423/2024 pending in the Court of the Chief Judicial Magistrate is also

quashed and set aside.

16. Petition is disposed of.

JUDGE

Comparing Assistant