

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

ITANAGAR PERMANENT BENCH : NAHARLAGUN

Crl. Rev. P. 11(AP)/2016

Shri Bupak Dui,
D-Sector, Naharlagun,
P.O./P.S.:- Naharlagun,
Dist.:- Papumpare, Arunachal Pradesh.

..... Petitioner

-versus-

1. The State of Arunachal Pradesh,
represented by the Public Prosecutor.

2. The Shri Pradip Kumar Das,
S/o. Late Abhay Charan Das,
R/o. House No.68, Nripen Bora Road,
Fatasil Ambari, P.O./P.S.- Fatasil Ambari,
Guwahati, Pin- 781025, Dist.- Kamrup(Metropolitan),
Assam.

..... Respondents

:: BEFORE ::

HON'BLE MR. JUSTICE MANOJIT BHUYAN

For the petitioner : Mr. L. Perme, Advocate.

For the Respondent No.1 : Mr. K. Tado, Public Prosecutor,
Arunachal Pradesh.

For the Respondent No.2 : Mr. A. Dhar, Advocate.

Date of hearing : 02.11.2016.

Date of Judgment : 04.11.2016.

JUDGMENT AND ORDER
(CAV)

Heard Mr. L. Perme, learned counsel for the petitioner as well as Mr. K. Tado, learned Public Prosecutor, Arunachal Pradesh. Also heard Mr. A. Dhar, learned counsel representing Respondent No.2.

2. On the basis of the complaint/first information lodged by the petitioner on 28.02.2014, Itanagar Police Station Case No.49/2014 was registered against the Respondent No.2 Shri Pradip Kumar Das under Section 420 of the Indian Penal Code read with Section 138 of the Negotiable Instruments Act.

3. The investigation of the case by Itanagar police personnel resulted in the Final/Closure Report dated 22.09.2014 recording that no ingredients of the offence of cheating was found against the said Respondent No.2 Shri Pradip Kumar Das. The said Final Report as well as the protest petition of the petitioner received consideration of the Chief Judicial Magistrate, Yupia and by order dated 02.05.2016, the Final Report stood accepted and the case (G.R. Case No.111/2014) was closed.

4. In the present petition, challenge is made to the Final Report dated 22.09.2014 as well as to the order dated 02.05.2016 of the court below with prayer for direction to the Investigating Officer to cause further investigation into the case. Ground assigned is that the Investigating Officer did not apply his mind while rendering the Final Report, in that, he had merely reproduced the contentions put forth by the petitioner and Respondent No.2 without making any effective investigation into the case. Further, the Investigating Officer failed to record statements under Section 161 Cr.P.C. of those persons who could throw light in the case. Particular reference in this regard is made in respect of the Manager of Allahabad Bank who, according to the petitioner, had connived with the Respondent No.2 to cheat the petitioner.

5. The order passed by the Chief Judicial Magistrate dated 02.05.2016 is also assailed on ground that the Court below could not have held that the case was of civil nature without the completion of proper investigation or trial. Also, the Court below failed to appreciate that the Final Report in the case had been submitted without any proper investigation. Further, no reasons whatsoever had been given while rejecting the protest petition filed by the petitioner.

6. As noticed from the facts of the case, the dispute between the petitioner and the Respondent No.2 has its genesis in the Power of Attorney dated 03.08.2009, whereby the Respondent No.2 had attorned power to the petitioner in respect of the execution works relating to P.M.G.S.Y. road from Taliha to Duchok. The petitioner was also attorned power to sign on cheques, withdraw cash and operate the bank account standing in the name of the firm of the Respondent No.2, namely, M/s. Pradip Kumar Das, Fatasil Ambari, Nripen Bora Road, Guwahati.

7. Controversy arose as and when the Rural Works Division (RWD), Daporijo, released an amount of Rs.1,08,91,612/- as part payment in respect of the road construction works in favour of the firm i.e. M/s. Pradip Kumar Das. According to the petitioner, he had visited the Respondent No.2 at Guwahati to get his signature on cheques, which the Respondent No.2 refused to do so unless the cheque issued from the Rural Works Division was deposited in the bank account of the firm i.e. M/s. Pradip Kumar Das. Back at Itanagar, the petitioner deposited the cheque in the bank account of the firm on 17.02.2014 and thereafter went to Guwahati and met the Respondent No.2 on 18.02.2014 for the purpose of getting signatures on 6(six) cheques of the value of Rs.15 lakhs each and another cheque of the value of Rs.8,40,000/-. According to the petitioner, the Respondent No.2 had also asked him to deposit the cheques after 22.02.2014. Much to the dismay of the petitioner, he came to learn from the Manager of Allahabad Bank at Itanagar that an e-mail dated 20.02.2014 had been received from the Respondent No.2 with instructions of "Stop Payment". At the same time, the Respondent No.2 had also withdrawn the entire amount received from the Rural Works Division on 21.02.2014 and 22.02.2014 from Guwahati. On the above facts and alleging that he had been cheated by the Respondent No.2, the complaint/first information dated 28.02.2014 came to be lodged. As aforesaid, the investigation of the case pursuant to the complaint/first information resulted in the submission of the Final/Closure Report.

8. The Respondent No.2, in its affidavit-in-opposition have denied commission of the offence of cheating on his part. Mr. A. Dhar makes reference to the documents enclosed to the affidavit-in-opposition to show that the petitioner had unilaterally opened bank account at the Allahabad Bank, Itanagar in the name of the firm i.e. M/s. Pradip Kumar Das showing the address at village Chiringmoring, P.O. Taliha, District-Upper Subansiri. Contention made is that the petitioner had intended to deposit the

cheque received from Rural Works Division in the Bank Account No.50052311275 instead of in the Bank Account No.50152766693 of M/s. Pradip Kumar Das having registered address at Nripen Bora Road, House No.68, Guwahati. Further argument advanced is that the petitioner had already instituted Money Suit being Money Suit No.34(AP)/2014 before the Civil Judge(Sr. Division)-cum-Chief Judicial Magistrate, Yupia against the Respondent No.2 for recovery of a sum of Rs.98,91,612/- together with cost and interest. The said amount was computed after deduction of Rs.1,00,000/- from the aforesaid amount of Rs.1,08,91,612/- that had been released by the Rural Works Division. In proof of the Money Suit having been filed by the petitioner, copy of the plaint thereof is annexed to the affidavit-in-opposition as Annexure- C 2. The computation of Rs.98,91,612/-, which is the subject matter of recovery in the Money Suit, is indicated at paragraph 12 of the plaint. According to Mr. Dhar, the said Money Suit is now at the stage of evidence and in proof thereof, copy of the deposition tendered by the petitioner by way of examination-in-chief as well as his deposition on cross-examination finds enclosed to the affidavit-in-opposition.

9. The submission of Respondent No.2 is that the complaint/first information had been lodged by the petitioner with ill-intention to misappropriate a huge amount of money of the Respondent No.2. It is also contended that the petitioner had also taken recourse to fraudulent activities by way of opening the Bank Account No.50052311275 in the name of the firm M/s. Pradip Kumar Das with different address and tried to take undue advantage in his capacity as a Power of Attorney holder. Further contention is that considering the entire facts of the case, the Investigating Officer did not find any element of cheating on the part of the Respondent No.2 and accordingly submitted the Final Report, which also stood accepted by the Court below on due application of mind and after considering the protest petition filed by the petitioner. Mr. Dhar submits that in the Final Report, the Investigating Officer had also recorded that the case involves monetary aspect and was of civil nature.

10. I have heard the learned counsel for the parties and have also perused the materials on record, including the records received from the Court below.

11. Turning to the complaint/first information dated 28.02.2014, the contents thereof prima-facie disclosed an offence of cheating which required investigation into the allegations so made. The Final Report No.373/2014 dated 22.09.2014, prepared by

the Investigating Officer and submitted before the Court below also discloses that all relevant materials and the facts surrounding the case were taken into consideration. Investigation into the case had been done with due diligence without any let or hindrance and strictly in accordance with law. The facts of the case as recorded in the Final Report itself goes to vindicate that a proper investigation had been carried out pursuant to the first information dated 28.02.2014. The conclusion derived by the Investigating Officer after investigation was that there was absence of any evidence attracting the ingredients of cheating in the case. According to the Investigating Officer, the case was purely a monetary matter and of civil nature. That being so, the matter being in the realm of non-cognizable, the same was answered in a Closure Report. The said Final Report was submitted before the Court below as per procedure under the law with prayer to accept the same.

12. Before the Court below, a protest petition had also been filed by the petitioner. The order dated 02.05.2016 passed by the Court of Chief Judicial Magistrate, Capital Complex, Yupia goes to show that the protest petition of the petitioner received due consideration. The facts of the case was also noticed by the Court below as well as the Apex Court decision in Criminal Appeal No.866/2015 relied upon by the petitioner. The documents annexed to the protest petition also received due consideration. On the Power of Attorney, the Court below noticed that there were no conditions creating liability upon the Respondent No.2 and whatever acts and deeds had been done by the petitioner, the same were carried out in his capacity as a Power of Attorney holder of the Respondent No.2 and nothing had been done in his personal capacity. On a conspectus of the case, the learned Court below held that ingredients of cheating against the Respondent No.2 was not discernible. Accordingly, the Final Report submitted by the Investigating Officer was accepted and the case was closed. To reiterate, a close perusal of the order dated 02.05.2016 shows that the same had been rendered after due consideration of the *pros and cons* of the case and after due consideration of the protest petition filed by the petitioner.

13. Another significant aspect of the case which goes against the petitioner is with regard to suppression of material facts. There is not a whisper in the petition as regards the institution of the Money Suit, being Money Suit No.34(AP)/2014, filed by the

petitioner before the Civil Judge(Sr. Division)-cum-Chief Judicial Magistrate, Yupia, for recovery of the amount released by the Rural Works Division.

14. Whether any right is created in favour of the petitioner on the strength of the Power of Attorney, reference can be had to the case of *Kasthuri Radhakrishnan & Ors. v. M. Chinniyar & Anr.*, reported in (2016) 3 SCC 296. In the said case, the Apex Court have held that it is well settled that an agent acting under a Power of Attorney always acts, as a general rule, in the name of his principal. Any act or thing done by the agent on the strength of the Power of Attorney can never be construed and/or treated to have been done by the agent in his personal capacity so as to create any right in his favour. Any act or thing done by the agent has to be construed as having been done by the principal himself. The ratio laid down in the said case is relevant to the extent that the act or thing done by the petitioner on the strength of the Power of Attorney, he cannot claim any right in his favour, not to speak of the amount of money released by the Rural Works Division. Another aspect of the matter is with regard to the objection raised by the petitioner that the Investigating Officer did not record statements under Section 161 Cr.P.C. of the Branch Manager of Allahabad Bank, Itanagar. The answer to this objection is that recording of statement under Section 161 Cr.P.C. of the Branch Manager of Allahabad Bank cannot be construed as a mandatory obligation on the part of the Investigating Officer. For the purpose of carrying out investigation, a police officer may examine orally any person who, in his opinion, may be acquainted with the facts and circumstances of the case. The objection raised by the petitioner do not have any legs to stand on.

15. From the foregoing discussions and findings, the petitioner has not been able to establish any case warranting interference of this Court to set aside the Final Report dated 22.09.2014 as well as the order of the Court below dated 02.05.2016. No case is also made out warranting a direction to the Investigating Officer to cause further investigation into the Itanagar Police Station Case No.49/2014. The petition being devoid of merits stands accordingly dismissed, however, without any order as to cost.

16. Records received from the court below be returned forthwith.

JUDGE

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