

**IN THE GAUHATI HIGH COURT**

**(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)**

**Crl. Petn. 01 (AP) 2013**

1. Shri Jimmy Duyu,  
S/o Shri Duyu Hailyang,  
R/o Mowb-II, P.O./P.S. Itanagar,  
Dist:- Papum Pare, Arunachal Pradesh.
2. Shri Duyu Tamo,  
S/o Shri Duyu Hailyang,  
R/o Chandan Nagar, P.O./P.S. Itanagar,  
Dist: Papum Pare, Arunachal Pradesh.

*.....Petitioners.*

**By Advocate:**

**Mr. K. Tama, Adv.**

**-Vs-**

1. Techi Katum,  
S/O Lt. Techi Tad,  
R/o Ganga Village, P.O./P.S. Itanagar,  
Dist: Papum Pare, Arunachal Pradesh.
2. The State of Arunachal Pradesh,  
Through the Public Prosecutor.

*.....Respondents.*

**By Advocate:**

**Mr. T. Pertin, Adv. For respondent No. 1.**

**Mr. K. Tado, learned PP for respondent No. 2.**

**BEFORE**

**HON'BLE MR. JUSTICE AJIT BORTHAKUR**

**Date of Judgment & Order (Oral) : 25.04.2017.**

Heard Mr. K. Tama, learned counsel for the petitioners and Mr. T. Pertin, learned counsel for the private respondent No. 1. Also heard Mr. K. Tado, learned Public Prosecutor, State of Arunachal Pradesh-respondent No. 2.

**2].** This is a petition under Section 482 Cr.P.C., praying for setting aside and quashing of the FIR, dated 27.01.2013, filed by the respondent No. 1 against the petitioners, whereupon Itanagar P.S. Case No. 24/2013 under Section 420/34 IPC was registered.

**3].** The petitioners' case, in brief, is that the respondent No. 1 lodged an FIR, on 27.01.2013, before the Officer-in-Charge, Itanagar P.S. alleging, inter alia, commission of the offence of cheating by them, who were partners in execution of contractual work by refusing to pay the share due to the informant-respondent No. 1 herein out of the bill amount drawn. The said FIR was registered as Itanagar P.S. Case No. 24/2013 under Section 420/34 IPC and took up the investigation.

**4].** The petitioners have contended that even if the FIR is taken at its face value and accepted in entirety, it does not prima facie constitute a cognizable offence, justifying an investigation by Police under Section 156 (1) Cr.P.C. as the ingredients of the offence of 'cheating' as defined under Section 415 IPC were not satisfied. According to the petitioners, the allegations are related to commercial transaction, wherein one partner was to make payment to other partner for the money invested in the contract works and therefore, purely of a civil nature, which is beyond the purview of a criminal trial. In this regard, the petitioners have drawn attention to the guidelines laid by the Apex Court in the State of Haryana-vs-Bhajan Lal, reported in 1992 Suppl. (1) SCC 335 and prayed to set aside and quash the FIR, dated 27.01.2013, whereupon Itanagar P.S. Case No. 24/2013 under Section 420/34 IPC was registered.

**5].** The informant/ respondent No. 1 in his affidavit-in-opposition and Mr. T. Pertin, learned counsel appearing on behalf of him submits that both the petitioners and the respondent No. 1 arrived at a consensus to execute the contractual works together with an understanding that the 60% of the expenses shall be borne by the petitioner No. 2 and the respondent No. 1 would bear 40% of the expenses and the net profit, if any, would also be in the same ratio of 60:40. However, the petitioner No. 2 raised the issue of Power of Attorney, dated 16.02.2010, executed in favour of the respondent No. 1 and wanted the same to be made in his favour and therefore, on good faith another Power of Attorney in favour of the petitioner No. 2 was executed on 14.09.2010 and further, an amount of Rs.10,00,000/- was also agreed to be paid to the Proprietor of M/S Maham Enterprise. It has been submitted that the petitioner

No. 1 is the elder brother of Petitioner No. 2 and through mutual understanding they and the respondent No. 1 executed various contractual works on an understanding of 60:40 ratio on profit. However, after completion of first package of the contract and some portion of the 2<sup>nd</sup> package of the tender works, petitioners had withdrawn the entire bill amount except Rs.23 Lacs which is still pending with the concerned Department. The respondent No. 1 further contended that the petitioners are liable to pay Rs.35 Lakhs to him. According to the respondent No. 1 and on bare perusal of the FIR, dated 27.01.2013, it is apparent that all the essential ingredients of 'cheating' are present as the petitioners have failed to pay the profit due to the respondent No. 1 and thus cheated him and in the back drop of the case, there can be both civil and criminal liabilities as the respondent No. 1 has been deceived with a fraudulent or dishonest intention by way of inducing him to part with the contract works and on believing the same on good faith parted with money, which the respondent No. 1 would not parted with or deliver, had the intention of the petitioners was known to him. Hence, the respondent No. 1 submits to dismiss the petition with cost.

**6].** Mr. K. Tado, learned Public Prosecutor for the State of Arunachal Pradesh-respondent No. 2 has submitted that investigation into the case is yet to be completed and therefore, it cannot be inferred whether the allegations contained in the FIR are civil or criminal in nature.

**7].** The basic principle underlying exercise of inherent jurisdiction under Section 482 Cr.P.C., by the High Court involves examination of the allegations brought in the complaint petition/ First Information Report (FIR) on their face value and taken to be correct in its entirety whether does disclose an offence. In a case, where the allegation apparently discloses is either of civil nature which cannot be adjudicated by criminal court or if entertained it would be an abuse of process of the Court, the same may be quashed in exercise of the inherent jurisdiction of the High Court under Section 482 Cr.P.C. If the FIR does not

disclose the commission of a cognizable offence, the same may be quashed in the interests of justice and to prevent the consequent abuse of the process of Court. In the case of State of Haryana & Ors.-vs- Ch. Bhajan Lal & Ors., reported in AIR 1992 SC 604, the Apex Court succinctly illustrated the aforesaid situations by way of guidelines as herein below quoted:-

**"1. Where the allegations made in the First Information Report or 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 a case against the accused.**

**2. Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the code.**

**3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.**

**4. Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.**

**5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.**

**6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/ or where there is a specific provision in the code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.**

**7. Where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused with a view to spite him due to private and personal grudge".**

**8].** In the instant case, it is seen that the informant-respondent No. 1 herein lodged the impugned FIR, dated 27.01.2013, before the officer-in-charge, Itanagar Police Station, against the petitioners alleging as follows:-

Sir,

*With due respect I beg to inform you that on the month of September, 2010 me along with my partners Shri Jimmy Duyu, Son of Shri Duyu Hailyang, permanent resident of Reru Village, P.O./P.S. Ziro, Lower Subansiri District, Arunachal Pradesh presently residing at Kids Angel Purvanchal School, Mowb-II, Itanagar and having mobile No. 919774046104, 919436246104 and Shri Duyu Tamo, Son of Shri Duyu Hailyang, permanent resident of Reru Village, P.O./P.S. Ziro, Lower Subansiri District, Arunachal Pradesh got 2 (two) nos. of tender work from the Department of UD & Housing, Capital Complex Division, Itanagar namely Package No. UIG / APPELLANT-03 /09-10 /C-05 amounting to Rs.165.75 Lakhs (Rs.1,57,46,254.00) executed under M/S Mahams Enterprises and another Package No. UIG/ APPELLANT-03/ C-13/09-10 amounting to Rs. 112.42 Lakhs (Rs. 106.00 Lakhs) executed under M/S Ujjal Baruah. I along with my partners started the work on the month of October, 2010 (i.e. 20/10/2010) at around 9.00 AM and completed the work in the month of June, 2011. Till date, the entire amount has been drawn by him*

*except Rs. 23.00 Lakhs which is pending under the Division. During this work my share was 60/ 40 on verbal with Shri Jimmy Duyu and the work was totally executed under my supervision. The matter is that after investing huge amount of money (i.e. Rs.42.00 Lakhs) but my partner is not willing to pay my 40% share and not willing to clear my liabilities of Rs.35.00 Lakhs. After requesting many times to my partner he is not taking any interest and he is involving third party member to mentally harassing me”.*

**9].** A close scrutiny of the above contentions made in the FIR prima facie does not disclose the ingredients constituting an offence of ‘cheating’ defined in Section 415 IPC which reads as under:-

*“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 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, is said to “cheat”.*

**10].** It is, therefore, seen that non-performance of promise to pay the share of return out of contractual agreement by a partner to another partner in business dealings does not certainly amount to cheating, punishable under Section 420 IPC, when the alleged element of deceit with the requisite mental element on the part of the petitioners preceded the dishonest or fraudulent inducement of any kind is indicated. The aforesaid contentions in the FIR, being prima-facie an act of mere breach of contractual obligations on the part of the petitioners, the same does not amount to an offence of ‘cheating’ exposing them to criminal liability.

**11].** Thus, having regard to the allegations made in the impugned FIR, in the light of the guideline No. 1 laid by the Apex Court in the above case of Bhajan Lal, this Court is of the considered opinion that the same do not prima-

facie disclose any cognizable offence against the petitioners and therefore, to prevent abuse of the process of police investigation or otherwise to secure the ends of justice, the same is liable to be quashed.

**12].** Accordingly, the FIR, dated 27.01.2013, lodged by the respondent No. 1 giving rise to Itanagar P.S. Case No. 24/2013 under Section 420/34 IPC is hereby set aside and quashed.

**11].** The petition stands disposed of.

Forward a copy of this judgment and order to the Officer-in-Charge, Itanagar Police Station and to the learned Chief Judicial Magistrate, Itanagar Capital Complex, Arunachal Pradesh.

**JUDGE**

Talorn