

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

ITANAGAR PERMANENT BENCH

Crl. Petn. NO. 17 (AP) 2013

Sri. Likha Taje,

Son of Late Likha Takha,

Resident of E-Sector, Nirjuli

PO & PS – Nirjuli, in the district of Papum Pare,

Arunachal Pradesh

.....petitioner.

Advocates for the petitioner:

Mr. N. Ratan,
Mr. G. Ngomdir,
Mr. J. Lollen,
Mr. K. Loya,
Mr. L. Bam,

-VERSUS-

1. The State of Arunachal Pradesh,

2. Smti. Osor Tayung,

Wife of Sri Bidol Tayenr

Resident of Mouza, Mowb-II, Itanagar,

PO & PS – Itanagar, in the district of Papum Pare,

Arunachal Pradesh.

..... Respondents.

Advocates for the respondents:

Ms. M. Tang, learned Addl. Public Prosecutor,

Mr. R. Saikia, respondent No. 2.

:::BEFORE:::
HON'BLE MR. JUSTICE AJIT BORTHAKUR

For the petitioner : Mr. N. Ratan,
For the respondent : Ms. M. Tang, learned Addl. P. P.
Date of hearing : **07.11.2017.**
Date of judgment : **07.11.2017.**

JUDGMENT & ORDER (ORAL)

Heard Mr. N. Ratan, learned counsel appearing for the petitioner and Ms. M. Tang, learned Additional Public Prosecutor, appearing on behalf of the State respondent No. 1.

2. None appeared for the respondent No. 2.

3. By this application filed under Section 482 Cr.P.C, the petitioner, who has been arrayed as an accused in Itanagar P.S. Case No.316/2011, (corresponding to GR Case No.517/2011), under Section 420 I.P.C, has prayed for quashing and setting aside the aforesaid criminal proceeding, which is pending in the Court of learned Judicial Magistrate, First Class, Yupia, Arunachal Pradesh.

4. The petitioner's case, in a nut shell, is that he had taken a personal loan from the respondent No. 2, the principal amount of which has already been repaid to her. Initially the agreement between the parties was to pay interest @10% per annum, which was subsequently renegotiated to 18% per annum. However, the petitioner's signature was obtained under threat and deceit in a paper showing the interest as 18% per month. The respondent No. 2 has already obtained an *ex parte* decree on Money Suit No.26/2012 (YPA) for recovery of an amount of `1,04,26,666/- only on the basis of the

aforesaid document. The respondent No. 2 further initiated criminal proceeding against the petitioner for recovery of the said amount, in respect of which Itanagar P.S. Case No.316/2011 under Section 420 I.P.C was registered and after completion of investigation, the police submitted charge sheet against the petitioner under Section 420 IPC vide Itanagar P.S. Charge-sheet No.140/2013, dated 08.06.2013, in the Court of learned Chief Judicial Magistrate, Papum Pare District, Yupia. According to the petitioner the dispute between the petitioner and the respondent No. 2 is purely civil in nature as the dispute if any, is surely on account of rate of interest that would be payable by the petitioner to the respondent No.2, if any, in the facts and circumstances of the case. In that view of the matter, the initiation of criminal proceeding against the petitioner on the same set of facts is nothing, but a clear abuse of the process of law.

5. Mr. N. Ratan, learned counsel appearing on behalf of the petitioner submits that to hold a person guilty of cheating, it is necessary to show that at the time of making promise he had fraudulent or dishonest intention to deceive or to induce person so deceived to do something, which he would not otherwise do and such a culpable intention right at the time of entering into an agreement cannot be presumed merely from his failure to keep the promise subsequently. Mr. Ratan relied on the ratio of the judgment rendered by the Apex Court in ***V.P. Shrivastava Vs. Indian Explosives Ltd. & Ors.,*** reported in ***(2010) 10 SCC 361***. Mr. Ratan further submits that in the instant case, when the respondent No. 2 has resorted to civil proceeding and obtained a decree for recovery of the alleged unpaid amount under the agreement, drawing up of a criminal proceeding is nothing but an abuse of the process of Court which, in the interest of justice, needs to be quashed.

6. Ms. M. Tang, learned Additional Public Prosecutor appearing for the State respondent No. 1 submits that on perusal of the FIR and other materials on the relevant case record, it is apparent that the criminal proceeding which

has been drawn up against the petitioner relates to dispute of civil in nature. Therefore, Ms. Tang submits that if the criminal proceeding is allowed to be continued against the petitioner that would only amount to abuse of the process of Court.

7. On scrutiny of the relevant records of GR Case No.517/2011 including the FIR, it is noticed that the accusation made against the petitioner when given face value and if taken as true discloses the fact of taking of a private loan money by the petitioner from the respondent No. 2 under a loan agreement and for alleged non-repayment of the loan amount, the respondent No. 2 instituted Money Suit No.26/2012 (YPA), wherein she has obtained an *ex parte* decree for recovery of Rs.1,04,26,666/- only vide the judgment and decree, dated 14.11.2012.

8. It is well settled that all the ingredients of the offence alleged to have been committed by the accused are to be established for bringing home the guilt, which ought to appear *ex facie* on the complaint. It may pertinently be mentioned that the petitioner had filed another Criminal Petition No.14(AP)2011 during the period of investigation into the case and the aforesaid petition was dismissed subscribing to the view that quashing of the police case would not be in the interest of justice, and thereby to allow the police to complete the investigation and submit its report. The Apex Court has clearly laid down the guidelines for quashing of a criminal proceeding in a catena of cases. On scrutiny of the materials available on the case record, this Court finds that the root cause of the criminal proceeding lies in the alleged breach of the terms of the contract pertaining to lending of money on interest, entered into between the parties, for which the respondent No. 2 has already obtained an *ex parte* decree in civil suit against the petitioner as stated above and as such, prosecuting the petitioner for the same set of facts, in the opinion of this Court, is certainly abuse of the process of the Court only.

9. For the reasons, set forth above, the charge sheet filed in connection with Itanagar P.S. Case No.316/2011 under Section 420 IPC and the resultant GR Case No.517/2011 under Section 420 IPC pending in the Court of learned Chief Judicial Magistrate, Papum Pare District at Yupia is hereby quashed and set aside as prayed.

10. Accordingly, the petition stands allowed.

Send back the LCRs along with a copy of this judgment and order.

JUDGE

Cha Gang