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**(2016) 10 GAU CK 0018**  
**In the Gauhati High Court**  
**Case No : Crl. Rev. Pet. No. 8 of 2014 (K)**

Pappu Sharma

APPELLANT

Vs

State of Nagaland

RESPONDENT

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**Date of Decision :** 24-10-2016

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482

**Citation :** (2017) 1 GauLT 443

**Hon'ble Judges :** S. Serto, J.

**Bench :** Single Bench

**Advocate :** Mr. P.D. Nair, Mr. G Alam, Mr. H. Rohman, Mr. Y. P Gupta and Mr. Philip Loring, Advocates, for the Petitioners; Mr. K. Wotsa, Sr. GA, for the Respondents

**Final Decision :** Disposed Off

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## Judgement

S. Serto, J. (CAV) - This is an application filed under Section 482 Cr.P.C, 1973 praying for quashing of the proceedings of the C.R Case No. 25/2012, registered against the petitioners u/s 420/406/ 506/34 of IPC and pending before the learned Judicial Magistrate 1st Class, Zunheboto, Nagaland.

2. I have heard Mr. G. Alam, learned counsel for the petitioners and Mr. K. Wotsa, learned Sr. Government Advocate who appeared on behalf of the respondent No. 1. None appeared on behalf of the respondent No.2 who is the complainant in the case despite the notice issued and published in a local paper namely, Nagaland Post on 13.11.2014.

3. The facts and circumstances which led to the filing of this case are briefly stated here below:-

On 16.08.2012, the respondent No. 2, filed a Complaint Petition before the learned Judicial Magistrate 1st Class, Zunheboto, Nagaland alleging as follows; that the petitioners came to his place at Ghathashi in Zunheboto district on 25.04.2012 and told him that they were in the process of purchasing a shop at

Khatkhati. Assam and had given a sum of Rs. 2 Lakhs as advance but they have been unable to mobilise the remaining sum to be paid i.e. Rs. 3 Lakhs, therefore, they have come to seek for help. He was also assured by them that if the said amount can be arranged by him they will return the same in a month's time as that are planning to sale their land in Bihar. Being concerned for the need shared, he gave a sum of Rs. 3 lakhs to the respondents on the same day but they did not returned the same within the time promised, therefore, he went to meet them at their place in Bihar. But when he met them he was threatened for filing a case against them instead of returning the amount taken from him. On his return, having no choice, he approached the Police Station for taking up a case against the petitioners but the Police refused to accept his complaint and instead, he was advised to file a case before a Court. Therefore, he has approached the Court with the Complaint Petition for recovery of the amount taken by the petitioners/accused in that case.

4. On presentation of the application, it appears from the record of the learned Judicial Magistrate 1st Class, Zunheboto, Nagaland that the respondent No. 2/ complainant in that case was examined under Section 200 of the Cr.P.C and his statement was recorded. The statement of the respondent/complainant as recorded is reproduced here below verbatim:-

"Statement of the complainant Shri Ranjeet Sharma S/o Shri. Tribhuwan Sharma recorded on oath.

My name is Ranjeet Sharma S/o Shri. Tribhuwan Sharma and I am the resident of the Village/Muhalla-Khalfare, P.S Siliguri, Dist-Darjeeling (West Bengal) permanently and since 10.05.2007 I have been residing at Ghathashi under the jurisdiction of the district Zunheboto, Nagaland and by profession I am a manasar of Shri. R. Angami and know the accused persons from very earlier. On 25.04.2012 the accused persons came at my residence in Ghathashi and said to me that they had taken a shop in Khatkhati (Assam) for business and paid Rs. 2,00,000/- in advance but the owner of the shop demanded Rs. 5,00,000/- in advance within 15 days and for that they wanted to lend Rs. 3,00,000/- for a month only because they had failed to sell their land of Bihar for purchasing this land of Khatkhati. Seeing the situation and under the circumstance and to being personally known and humanitarian reasons on belief I paid them Rs. 3,00,000/- same day after managing from friends, well-wishers and relatives and next day on 26.04.2012 they departed from my residence to their residence for the best purposes but even after the expiry of the stipulated period of time one month they did not back the loan money, to me and not contact for any reasonable cause, accordingly I myself contacted them and demanded my money but they took the time of one month more saying that they were in difficulties in that days but the given time of one month more passed also and they did not return my money in accordance with their words and day after day passed and then I started to call in question and wanted to contact them in different way but my all efforts were in vain and lastly one week before I myself went at Khatkhati and

searched them but no body was found there and the given location of the shop was also wrong and then I departed from there to the residence of the accused persons and met them but they refused to back something and on the other hand threatened me for filing the case against them. Seeing the situation and under the circumstances I came back to my quarter in Nagaland from there and went to the Police Station for investigating the case against the accused persons and accordingly said the officer-in-charge about the occurrence in details but the officer-in-charge advised to file the case in the Court and hence finding no any other alternative I have filed this case against the accused persons for recovery my loan money Rs. 3,00,000/- with interest and for the compensation. This is my statement.

Ranjeet Sharma".

5. The learned Judicial Magistrate 1st Class, though he is required to put his signature on such statement of the complainant under Section 200 Cr.P.C did not do so. But being satisfied that prima facie, the offences punishable under Section 420/406/506/34 IPC has been committed by the petitioners/ accused in that case against the respondent No.2/Complainant, took cognizance and issued summons for their appearance. Since they did not appear the learned Judicial Magistrate 1st Class, issued warrant of arrest (bailable) against the petitioners/ accused persons. This time also the petitioners/accused persons neither appeared on their own nor they were produced in pursuance of the warrant issued against them. It is however stated by the petitioners that they were not aware of the summons issued to them and the warrant of arrest (bailable) issued against them. The learned Judicial Magistrate 1st Class, thereafter, issued warrant of arrest (non-bailable) against the petitioners/accused persons and warrant for attachment of their properties under Section 83 of the Cr.P.C.

According to the petitioners/accused persons, it is only then that came to know that such a case has been instituted against them, and being aggrieved they have come to this Court praying for quashing the proceedings of the said case.

6. The case of the petitioners as submitted by the learned counsel Mr. G Alam is that they never knew the respondent No. 2 and had never been at Khakhati in Assam. Therefore, the question of borrowing the sum of Rs. 3,00,000 (three lacs) from the respondent No.2 and of buying of a shop at such place as alleged does not arise, and on the day they are alleged to have borrowed the money from the respondent No.2 at his place in Nagaland they were at their work places at Faridabad in UP, as such, the case registered against them before the learned Magistrate is nothing but based on the wild allegations of the respondent No.2/ Complainant which are without any basis whatsoever.

7. The learned counsel also submitted that the case of the respondent No.2 as can be made out from the complaint petition and his statement recorded under Section 200 of the Cr. P.C is for recovery of a sum of Rs. 3 lakhs from the petitioners/accused persons which he alleged was borrowed by them, as such,

the same is civil in nature, therefore, registration of the complaint case under sections of IPC is nothing but abuse of process of law hence deserves to be quashed.

8. The learned counsel for the petitioners, in support of his submission cited the case of Joseph Salvaraja v. State of Gujarat & Ors., as reported in (2011) 7 SCC 59 and the case of Narender Kumar Jain v. State of NCT of Delhi & Anr., as reported in (2010) CrI. J 3411. The judgment of the Hon''ble Supreme Court in the first case and the judgment of the Hon''ble Delhi High Court in the second case are instructive and provides the guiding principles, therefore, the relevant paragraphs of the two judgments are reproduced herein below one after the other :-

Paragraph 14 to 20 of the Hon''ble Supreme Court's Judgment:

"14. In the instant case, we have to first examine whether any of the ingredients under Section 406, 420 or 506 Part I IPC have been made out to enable the Court to take cognizance thereof against the appellant or not. Bare perusal of the FIR lodged by the complainant, would indicate that he had got in touch with the appellant so as to extend the benefit of the appellant's channel "GOD TV" to his other brethren residing at Ahmedabad. For the said purposes, he had met the owner of Siti Cable, Bapi Nagar in Ahmedabad and negotiated a settlement for the second case sum of Rs. 10 lakhs on behalf of the appellant's company as the fee to be paid to Siti Cable by the appellant for telecast of channel "GOD TV" in Ahmedabad. Further grievance of the complainant was that despite the telecast of "GOD TV", the appellant, as promised, failed to pay a sum of Rs. 10 lakhs to the owners of Siti Cables. This is what has been mentioned in a nutshell in the complainant's FIR. We have grave doubt, in our mind whether on such averments, even a prima facie case of the aforesaid offences could be made out against the present appellant.

15. Criminal breach of trust is defined under Section 405 IPC and Section 406 thereof deals with punishment to be awarded to the accused, if found guilty for commission of the said offence i.e with imprisonment for a term which may extend to three years, or with fine, or with both. Section 420 IPC deals with cheating and dishonestly inducing delivery of property. Cheating has been defined under Section 415 IPC to constitute an offence. Under the aforesaid section, it is inbuilt that there has to be a dishonest intention from the very beginning, which is sine qua non to hold the accused guilty for commission of the said offence. Categorical and microscopic examination of the FIR certainly does not reflect any such dishonest intention ab initio on the part of the appellant. Section 506 IPC deals with punishment for criminal intimidation. Criminal intimidation, insult and annoyance have been defined in Section 503 IPC but the FIR lodged by the complainant does not show or reflect that any such threat to cause injury to person or of property was ever given by the appellant to the complainant.

16. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents; etc. or not.

17. In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the appellant. The present FIR is an abuse of process of law. The purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the appellant. It does not meet the strict standard of proof required to sustain a criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly held by this Court in *Devendra v. State of U.P.*, relevant part thereof is reproduced herein below (SCC p. 506 para 27)

"27 A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out."

18. In fact, all these questions have been elaborately discussed by this Court in the most of quoted judgment in *State of Haryana v. Bhajan Lai* where seven cardinal principles have been carved out before cognizance of offences, said to have been committed by the accused, it taken. The case in hand unfortunately does not fall in that category where cognizance of the offence could have been taken by the Court, at least after having gone through the FIR, which discloses only a civil dispute.

19. The appellant cannot be allowed to go through the rigmarole of a criminal prosecution for long number of years, even when admittedly a civil suit has already been filed against the appellant and respondent No. 4 complainant, and is still sub judice. In the said suit, the appellant is at liberty to contest the same on grounds available to him in accordance with law as per the leave granted by the trial Court. It may also be pertinent to mention here that the complainant has not been able to show that at any material point of time there was any contract, much less any privity of contract between the appellant and respondent No. 4 complainant. There was no cause of action to even lodge an FIR against the appellant as neither the complainant had to receive the money nor was he in any way instrumental to telecast "GOD TV" in certain areas of Ahmedabad. He appears to be totally a stranger to the same. The appellant's prosecution would only lead to his harassment and humiliation, which cannot be permitted in accordance with the principles of law.

20. Thus, looking to the matter from all angles, we are of the considered opinion that the prosecution of the appellant for commission of the alleged offences

would be clear abuse of the process of law. The FIR under the circumstances deserves to be quashed at the threshold. We accordingly do so. The appeal is, therefore, allowed. The order of the learned Single Judge is set aside. The FIR dated 5.9.2006 lodged by respondent No. 4 complainant with Odhav Police Station, Ahmedabad stands quashed and all criminal proceedings emanating there from also stand quashed."

9. Paragraph 8 to 12 of the judgment of Delhi High Court:-

"8. In the case of V.Y. Jose & Anr. v. State of Gujarat & Anr. (supra) the Hon''ble Supreme Court, inter alia, observed as under:

Section 482 of the Code of Criminal Procedure, saves the inherent power of the Court. It serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years although no case has been made out against him.

It is one thing to say that a case has been made out for trial and as such the criminal proceedings should not be quashed but is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all.

9. In Inder Mohan Goswami & Anr v. State of Uttaranchal & Ors., the Hon''ble Supreme Court, while quashing all the proceedings emanating from the FIR, inter alia, observed as under:

The Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused.

In Indian Oil Corporation v. NEPC India Ltd. & Ors., the Hon''ble Supreme Court cautioned against a growing tendency in business circles to convert purely Civil disputes into Criminal Cases. The Hon''ble Supreme Court observed that:

Any effort to settle Civil disputes and claims, which do not involve any Criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

10. The present case appears to be an attempt to solve a dispute which is purely of Civil nature, by putting pressure on the petitioner by initiating Criminal proceedings against him. The allegations made in the FIR, even if taken as correct and on their face value, do not constitute any criminal offence, and therefore, the guidelines laid down by the Supreme Court in the case of Bhajan Lai (supra) squarely apply to the present case.

11. As regards to the alleged threat, I find that there is no specific allegation in the complaint. The complainant does not say on which date the threat was given to him, what precisely was the threat and where it was given. The allegations made in this regard being absolutely vague and general in nature cannot be the sole basis of prosecution u/s 506 IPC.

12. It appears from the above referred facts and circumstances that the transaction between the parties was purely of Civil nature and the FIR is only an attempt to pressurize the petitioner to perform his Civil obligation. The appropriate remedy for the complainant is to approach a Civil Court and lodging of FIR for commission of a cognizable offence was totally misconceived in the facts and circumstances of the case.

For the reasons given above, FIR No. 249/2008 lodged by respondent No.2 at Police Station Rajinder Nagar under Section 420/406/506 IPC and the proceedings arising therefrom are hereby quashed."

10. Now coming back to the facts of the case, no document was filed in support of the case of the respondent No.2/complainant that the petitioners/accused persons had taken a sum of Rs. 3 lakhs from him and they promised to return the same within 1 (one) month. Secondly, besides the respondent No. 2/complainant no other witness was examined by the learned Magistrate in support of the case of the respondent No.2/complainant. As such, except for the statement of the respondent No.2/complainant himself there was no supporting document or statement of witness or witnesses which supports his case. Therefore, I failed to see on what basis or material the learned Magistrate 1st Class formed his opinion that there was *prima facie* on the complaint of the respondent No.2/complainant.

11. In a complaint case, before the process is initiated, the Magistrate should have materials before him to form an opinion that there is *prima facie* in the complaint of the complainant. Only then that the Magistrate should take cognizance of the offence/offences charged against the accused and initiate the process. But in this case as stated above there is nothing either in the form of document or in the form of statement of witness which supports the case of the respondent No.2/complainant. The complaint of the respondent No.2/Complainant in the absence of such supporting material at best can only be mere allegation. Therefore, to take cognizance of offences punishable under the sections of the IPC as has been done in that case, is nothing but abuse of the due process of law.

12. Moreover, plain reading of the statement of the respondent No.2/complainant as given above would reveal that no criminal offence is alleged against the petitioners/accused persons. At best it presents existence of a dispute of civil nature between the respondent No.2/complainant and the petitioners/accused persons. In fact, the statement of the respondent No.2/complainant does not *prima facie* disclose commission of any of the offences by the petitioners.

13. The language, tone and tenor of the complaint petition and the statement of the respondent No.2/complainant at best can only be said to present a case of civil nature. In fact, the very prayer of the respondent No. 2/complainant as recorded by the learned Judicial Magistrate 1st Class is for recovery of a sum of Rs. 3 lakhs with interest from the petitioners/accused persons which he alleged

had been borrowed from him.

14. In view of the reasons stated above, the proceeding before the learned Judicial Magistrate 1st Class, Zunheboto, Nagaland is not only uncalled for but is abuse of process of law. therefore, the same deserves to be quashed as is done in the cases cited above by the learned counsel for the petitioners. Hence, the same is quashed.

15. The respondent No. 2/complainant can take recourse to civil suit for recovery of the money which he has alleged to have been taken by the petitioners, if he is so advised.

16. With this, the case is disposed.