

IN THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM:NAGALAND:MEGHALAYA:MANIPUR:  
TRIPURA:MIZORAM & ARUNACHAL PREDESH)  
SHILLONG BENCH

**Crl Revn(P) No. 53(SH) of 2011**

Smti Patricia Suchiang,  
R/o Lum Pariat Ladthlaboh,  
Jowai, Jaintia Hills District,  
Meghalaya.

: Petitioner

Versus

1. The Superintendent of Police,  
Jaintia Hills District,  
Meghalaya.

2. Shri Silbenus Sukhlain,  
R/o Lad Sutnga Village,  
Jaintia Hills District,  
Meghalaya.

3. The Officer-in-charge  
Jowai Police Station,  
Jowai, Jaintia Hills District,  
Meghalaya.

: Respondents

**B E F O R E  
THE HON'BLE MR JUSTICE T VAIPHEI**

For the petitioner

: Mr AN Diengdoh,  
Mr KC Gautam,  
Mr Roshmani,  
Ms P Sabatini Nongbet,  
Ms P Nonglait.  
Advocates

For the respondents

: Mr ND Chullai,  
Sr GA Meghalaya.

Date of hearing

: 11.4.2012

Date of Judgment and order

: 27-4-2012

## **JUDGMENT AND ORDER**

This criminal revision should have been registered as Criminal Petition as the petitioner is invoking the inherent jurisdiction of this Court under Section 482, Code of Criminal Procedure, 1983 (“the Code” for short) for quashing the First Information Report, which was registered as Jowai P.S. Case No. 148(10)2011 under Sections 420/468/34 IPC as well as the investigation conducted by the police in connection therewith.

2. The parameters for quashing the FIR by the High Court under Section 482 of the Code came up for detailed consideration in ***State of Haryana v. Bhajan Lal, reported in 1992 Supp(1) SCC 335***, and the Apex Court, after reviewing a large number of cases, held as follows:

*“102. In the backdrop of interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted above and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent the abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at 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 made in the FIR do not constitute 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 Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceeding and/or where there is a specific provision in the Code or the Act concerned, 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 and with a view to spite him due to private and personal grudge.*

*103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised sparingly and with circumspection and that too in the rarest of rare cases that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."*

3. Without going into the details of the revision petition, I will straightaway refer to the contents of the first information report (the English translation), which is annexed to Annexure-P/16 of the revision petition and reads thus:

**"To  
The Officer-in-Charge,  
Jowai P.S.**

**Sub: FIR**

**Sir,**

**With reference to the above mentioned subject, I am filing the FIR against Smti. Patricia Suchiang and Smti Bulbully Laloo both resident of Jowai. They had borrowed a loan amounting to Rs. Two lakhs on the 18.7.2010 on 23-7-2010, Rs. Three lakhs, on the 15-11-2010 Rs. Two lakhs with the promise that they will pay 7 lakhs within 6 months and one year along with interest of Rs. 5 per hundred per month.**

**The above mentioned borrowers had mortgaged the land holding No. 35/2001. It is unfortunate that they have not paid my money and I have gone to enquire and check from the District Council, I had found out that there was no such land holding 35/2001. And land holding and map was forged by them.**

**On this matter, I request you to kindly investigate, arrest and punish the above named culprits according to the law.**

**Your kind consideration will be highly appreciated by me.**

**Thanking you.**

**Yours sincerely,  
Sd/-  
Shri Silbinus Sukhlain.**

**The Loan agreements and land holding are enclosed.**”

(Underlined for emphasis)

4. When the respondent refused to repay the loan amount in question, the respondent is alleged to have harassed the petitioner and her family and threatened to oust her from her land and the building standing thereon and occupy the same for non-payment of the loan amount. This compelled her to institute T.S. No. 18 of 2011 before the Subordinate District Council Court, Jowai for a decree of declaration of title and perpetual injunction against the respondent. A temporary injunction was also obtained by her to restrain the respondent from harassing her during the pendency of the suit. The contention of Mr. K.C. Gautam, the learned counsel for the petitioner, is that the dispute between the parties is nothing but a dispute involving breach of contract for non-payment of the money borrowed by the petitioner from the respondent: the FIR, therefore, does not disclose any criminal offence and is liable to be quashed. On the other hand, Mr. N.D. Chullai, the State counsel submits that inasmuch as the petitioner was granted the loan on deposit of her title to her landed property as security for repayment of the loan and when it was found that there was no such land holding and may so enclosed was also a forged document, there was an element of deception and forgery thereby satisfying the ingredients of Section 420/468 IPC. The question which falls for determination is thus whether the allegations made in the FIR against the petitioner, even if they are taken at their face value and accepted in their entirety, prima facie constitute the offence of Section 420/468 IPC? The allegations made against the petitioner in the FIR are that the petitioner borrowed from the respondent a loan amounting to `2,00,000/- on 18-7-2010, another sum of `3,00,000/- on 23-7-2010 and `2,00,000/- on 15-11-2010 with a promise to repay

the same together with an interest @ `5/- per hundred per month and that she had mortgage her land holding No. 35/2001 situated at Mihmyntdu PHC as security against the loan vide the loan agreement dated 15-11-2010 (Annexure-P/3). The case of the respondent is that he subsequently found that there was no such land holding No. 35/2001 and that the land holding certificate and the accompanying map were forged by her. In my opinion, the veracity of these allegations cannot be tested by this Court at this stage. He contends that had he knew that the land holding was non-existent when she offered to mortgage the same as security for repayment of the loan, he would not have parted with his money. The essential ingredients of the offence of cheating were reiterated by the Apex Court in the recent decision of *Iridium India Telecom Ltd. v. Motorola Inc., (2011) 1 SCC 74* where it held:

*“68. A bare perusal of the aforesaid section would show that it can be conveniently divided into two parts. The first part makes it necessary that the deception by the accused of the person deceived must be fraudulent and dishonest. Such deception must induce the person deceived to either: (a) deliver property to any person; or (b) consent that any person shall retain any property. The second part also requires that the accused must by deception intentionally induced the person deceived either to do or omit to do anything which he would not or omit, if he was so deceived. Furthermore, such act or omission must cause or must be likely to cause damage or harm to that person in body, mind, reputation or property. Thus, it is evident that deception is a necessary ingredient for the offence of cheating under both parts of the section. The complainant, therefore, necessarily prove that the inducement has been caused by the deception exercised by the accused. Such deception must necessarily produce the inducement to part with or deliver property, which the complainant would not have parted with or delivered, but for the inducement resulting from deception. The Explanation to the section would clearly indicate that there must be no dishonest concealment of facts. In other words, non-disclosure of relevant information would also be treated as a misrepresentation of facts leading to deception.”*

5. Thus, for example, mere failure to perform the promise is by itself not enough. To hold a person guilty of the offence of cheating, it is necessary to show that at the time of making the promise, he had fraudulent or dishonest intention to deceive or to induce the person so deceived to do something which he would not otherwise do. It is, however, true that such a culpable intention right at the time of entering into agreement cannot be presumed merely from his failure to keep the

promise subsequently. In the instant case, from the uncontroverted allegations of the respondent, it appears that the petitioner induced the respondent to part with the loan amount on the representation made by her that she had a land holding and deposited the land holding document and the map as a security for repayment of the loan: had no such representation be made by her, the respondent would not have parted with his money. Therefore, it is not difficult to presume that at the time of negotiating the loan, the petitioner had a culpable intention to deceive the respondent. Prima facie, an element of deception can be inferred at this stage. Similarly, there is prima facie evidence of forgery. This presumption can be rebutted by the petitioner in the course of inquiry or trial from the evidence of the respondent or the evidence adduced by her. Consequently, the petitioner has failed to pass the tests laid down by the Apex Court in ***Bhajan Lal case (supra)*** for quashing the FIR and the investigation launched in connection therewith. Mr. K.C. Gautam, the learned counsel for the petitioner, makes a last-ditch effort to salvage his case by submitting that when the respondent can alternatively institute a suit for breach of contract to recover the loan amount from her and when he cannot seek recovery of the money through criminal proceedings, the FIR filed by her is misconceived and should be quashed. An argument of somewhat similar nature was repelled by the Apex Court very recently in ***Lee Kun Hee v. State of U.P. and others, (2012) 3 SCC 132*** in the following manner:

*“We have given our careful consideration to the last contention advanced at the hands of the learned counsel for the appellants. We are of the considered view that in the offences of the nature contemplated under the summoning order there can be civil liability coupled with criminal culpability. What a party has been deprived of by an act of cheating can be claimed through a civil action. The same deprivation based on denial by way of deception, emerging from an act of cheating, would also attract criminal liability. In the course of criminal prosecution, a complainant cannot seek a reciprocal relief for the actions of the accused. As in the instant case, the monetary consideration under the bill of exchange dated 1-2-2001 cannot be claimed in the criminal proceedings for that relief the remedy would be only through a civil suit. It is therefore not possible for us to accept that since a civil claim has been raised by the complainant JCE Consultancy, based on the alleged breach of the agreement dated 1-12-2001, it can be prevented from initiating proceedings for penal*

*consequences for the alleged offences committed by the accused under the Penal Code.”*

6. For the afore-mentioned reasons, no case is made out by the petitioner at this stage for quashing the FIR, which is yet to be investigated or charge-sheeted. Resultantly, this criminal revision has no merit, and is, therefore, dismissed. No costs. Interim order, if any, stands vacated.

JUDGE

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