

**HIGH COURT OF TRIPURA  
AGARTALA**

CRL.PETN. No.29 of 2018

Debabrata Barua

-----Petitioner(s)

Versus

The State of Tripura and 2 Others

-----Respondent(s)

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For Petitioner(s)	:	Mr. Somik Deb, Advocate Mr. A.Dey, Advocate Mr. Koomar Chakraborty, Advocate
For Respondent(s)	:	Mr. A. Roy Barman, Addl. P.P.

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**HON'BLE MR. JUSTICE S. TALAPATRA**

**Order**

**29/06/2018**

Heard Mr. Somik Deb, learned counsel appearing for the petitioner as well as Mr. A. Roy Barman, learned Addl. P.P. appearing for the respondents No.1 and 2. Despite due notice from this Court, none appears for the respondent No.3 (the complainant).

This is a petition under Section 482 of the Cr.P.C. for quashing/setting aside the First Information Report dated 19.05.2015 and the final report filed under Section 173(2) of the Cr.P.C. on 31.10.2017 respectively, Annexure-4 and Annexure-9 to this petition.

The fact which is essential and relevant for appreciating the said challenge is that the complainant (the respondent No.3) applied for loan for setting up one unit for producing Packaged Drinking Water, to the North Eastern Development

Finance Corporation Limited (NEDFi, in short). Towards ascertaining the creditworthiness of the complainant, the NEDFi wrote to the Manager, United Bank of India, Udaipur Branch to send a creditworthiness report in respect of the complainant by their communication dated 10.05.2012 (Annexure-1 to this petition). There is no dispute that by the credit information dated 13.05.2012 the petitioner who has holding the post of Senior Manager of that Branch at the relevant point of time had informed that the complainant was a defaulter-borrower having loan account No.0462300130011 and 0462300135788 as per their records and the outstanding dues were not cleared by him despite all their efforts.

The complainant in the complaint filed in the Court of the Chief Judicial Magistrate, South Tripura, Udaipur being Misc.44/2015 has alleged that on the basis of the said report which has been styled as false document/letter in the complaint, the NEDFi refused to accord sanction of the said loan. The Chief Judicial Magistrate without taking cognizance, had sent the matter to the R.K.Pur Police Station for investigating into the allegations after registering a case, in exercise of the powers under Section 156(3) of the Cr.P.C.

It is also not in dispute that the police after investigation filed the first final report vide No.58/15 on 17.09.2015 by drawing the following inference:

**"From the statement of witnesses and other circumstantial evidences it is revealed that the**

**complainant is a defaulter customer in Udaipur UBI Bank up to 13-12-2013. On perusal of the all documents which are issued by the NEDFI against the complainant it was revealed that along with the credit information report of UBI Bank there are several reason behind for not sanction loan against the complainant. No prima facie case found established against the alleged FIR named A/P of this case and this case established to be a result of mistake due to mistake the complainant had lodged court complaint against the FIR named A/P. There was no incident took place in accordance with fact of alleged complaint lodged by the complainant and the actual fact does not attract the section of 468/471 IPC."**

Thereafter, the complainant filed a protest petition and demanded for further investigation of the matter. The said prayer was allowed by the Chief Judicial Magistrate, South Tripura, Udaipur, as he then was. As consequence of that order, the police took up the investigation again and completed such investigation. After having perused the materials so collected in the subsequent investigation and its previous part, the police filed the final report vide the charge-sheet No.134/2017 on 31.10.2017 under Section 468/471 of the IPC. In the report, it has been observed that:

**"During investigation from the statement and witness and documentary evidence it is revealed that accused Debabrata Barua given false information to N.E.D.F.I. – regarding bank duose.**

**During investigation from the evidence records a Prima facie charge u/s-468/471 IPC has been well established against Debabrata Barua S/O Lt. Jogesh Chandra Barua of Dhaleswar road No.7 P.S. East Agt.**

**Hence, I do here by submitted charge sheet vide R.K. Pur P.S. C/S No.-134/2017 dt. 31-10-2017 u/s-468/471 I.P.C. against the F.I.R name a/p namely Debabrata Barua (55) S/O Lt. Jogesh Chandra Barua of Dhaleswar road No.7 P.S. R.K. Pur to face trial in the open Court of law for ends of justice witness may kindly be summons to prove the case, thus oblige."**

The complaint (later on, registered as the first information report) and the final report filed vide the

chargesheet No.134/2017 dated 31.10.2017 in RK Pur PS Case No.2015RKP077 have been challenged in this petition.

Mr. Somik Deb, learned counsel appearing for the petitioner has submitted that there is no material to file the final report available in the police papers. The ingredients of 468 and 471 IPC are only conspicuous by absence and hence, for saving the petitioner from unnecessary persecution of the legal process, this Court may intervene and quash the said complaint as well as the final police report, as stated.

Mr. A. Roy Barman, learned Addl. P.P. appearing for the State has in usual fairness submitted that he has scrutinized the records and there is no material to file the chargesheet against the petitioner under Section 468 and 471 of the IPC. Mr. Roy Barman has further submitted that even if the entire complaint is believed, it will not make out a case under Section 468 or 471 IPC. For purpose of reference, let this Court reproduce the provision of Section 468 of the IPC :

**"468.Forgery for purpose of cheating.- Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."**

However, Section 471 of the IPC reads as under:

**"471. Using as genuine a forged [document or electronic record].- Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic record], shall be punished in the same manner as if he had forged such [document or electronic record]."**

Thus the basic ingredient for an offence punishable under Section 468 of the IPC is forgery with intention of cheating and the ingredients for the offence punishable under Section 471 of the IPC are that the document which is forged is used as genuine, fraudulently or dishonestly.

Before we come to any inference, one statement of the former Bank Manager, namely, Mohit Krishna Debbarma, who had issued the purported Clearance Certificate and executed the deed of release of the mortgaged property has stated to the police officer very categorically that if the documents are noticed properly, it will be evident that on 13.12.2013 the complainant was a defaulter on account. The information what has been given by the accused to the NEDFi was correct and there is no conspiracy against the complaint. It is to be noted that the credit information was given on 30.05.2012. On the face of that, conveniently it can be also inferred that even no incorrect information was given by the petitioner. No evidence has been found on scanning the entire police papers in respect of forgery which has been defined in Section 463 of the IPC. It reads as follows:

**"463. Forgery.- [Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."**

It is apparent from the record that the petitioner had transmitted the said credit information on the basis of the records available before him on the relevant date and there are witnesses who have categorically stated on the relevant date of issuing the said credit information in the records the respondent No.3 was shown as defaulter. Even no incorrect information was transmitted by the petitioner, to say the least, about forging of any document or use of such document fraudulently or dishonestly by the petitioner. There is no element of cheating inasmuch as that was an inter-office communication between two financial organizations. Even if, and there was any misreading of the records, based on which the communication was made to NEDFi. That cannot constitute an offence under Section 468/471 of the IPC.

In the result this petition is allowed and as consequence there of, the complaint being Misc.44/2015 and the final report under Section 173(2) of the Cr.P.C. vide the chargesheet No.134 of 2017 dated 31.10.2017 are quashed.

The petitioner is discharged from the criminal liability as alleged in the said complaint.

Send down the records forthwith.

**JUDGE**