

**HIGH COURT OF TRIPURA
AGARTALA
Crl. Petn. 26 of 2024**

***Sri Subash Debnath@ Suvas
S/o-Late Harendra Krishna Debnath
Presently residing at – Jumerdhepa
Near Hospital, P.S- Melaghar
Dist-Sepajijala, Pin -799115***

Petitioner(s)

Versus

***1. The State of Tripura
2. Smt. Bholu Dey,
W/o- Sentu Dey
Resident of Renasas Club, Jhumerdhepa
PO & PS- Melaghar, Dist- Sepahijala
Pin- 799115.***

Respondent(s)

For the Petitioner(s) : Mr. S. Bhattacharjee, Advocate.
Mr. S. Noatia, Advocate.

For the Respondent(s) : Mr. S. Lodh, Advocate.
Mr. R. Dutta, P.P.

Date of hearing and delivery of
Judgment & Order : 31.07.2024

Whether fit for reporting : YES.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
JUDGMENT & ORDER(ORAL)**

This is an application filed under Section 482 of Cr.P.C to quash
the proceeding and also to set aside the order dated 06.03.2024 passed in PRC

(WP) 57 of 2023 by the Learned Judicial Magistrate 1st Class, Court No.2, Sonamura, Sepahijala.

[2] Brief facts of the case is that the respondent No.2 herein filed one Court complaint inter alia stating that the petitioner on many occasions borrowed total Rs. 63,050/- through bank account from the respondent No.2. After taking such amount the petitioner did not return the same and cheated him. Thereafter, suddenly a criminal case vide case No. Melaghar P/S 47 of 2021 was registered against the son of respondent No.2 due to that all the family members of the respondent no.2 remain absconded from their resident and taken shelter in a rented house at Kolkata. Meanwhile, the respondent no.2 came back to Agartala with her husband and approached the petitioner for refund the money. But the petitioner did not return the same. Thereafter, the respondent no.2 again return to Kolkata and started staying there. After that, the petitioner also went to Kolkata with some other person and forcibly took golden wearing ornaments (a gold chain about 1 ½ bori & one pair of golden bangles about 3 boris) and cash amount of Rs.35,000/- from the possession of the respondent no.2. The petitioner along with some other person from Kolkata also threatened to suffer dire consequences, if they informed the police. After coming back from Kolkata respondent no2. filed court complaint u/s 156 (3) of the Cr.P.C to direct the O/C Melaghar PS for registration of the instant complaint and to investigate the case. That on receipt of the application Melaghar PS registered one FIR vide No. 2022 MLG 047 u/S 406/417/379/506/34 of IPC. Thereafter, in the event of the petitioner's arrest the petitioner herein filed one application before Sessions Judge, Sepahijala, Sonamura for granting anticipatory bail and after hearing both the parties, the Learned Sessions Judge granted the anticipatory bail. After investigation the IO

of the case recorded 8 persons statement under Section 161 of Cr.PC and filed charge sheet under Section 406/417 of IPC against the petitioner.

Thereafter, a PRC case was registered in connection with Melaghar PS case No. 2022 MLG 047 dated 13.07.2022, which was numbered as PRC (WP) 57 of 2023. And after receiving of the summons from the Learned Judicial Magistrate 1st Class, Court No.2, the petitioner appeared before the court by appointing counsel and on 04.10.2023 filed one application under Section 239 of Cr.PC for discharge of the petitioner. And on 06.03.2024 after hearing both parties the Learned Trial Court rejected the discharge petition filed by the petitioner stating that *prima facie* there is ground to proceed against the petitioner u/S 417 of IPC. Hence this present Criminal Petition.

[3] Mr. S. Bhattacharjee, learned counsel appearing for the petitioner submits before this Court that a Court complaint was lodged by the respondent no.2 against the petitioner regarding refund of the amount borrowed by the petitioner from the respondent No.2 and on the basis of that complaint Melaghar PS registered a case against the petitioner. Mr. Bhattacharjee, learned counsel contends that learned Trial Court misconstrued the provision of Section 417 of IPC and it is evident from the FIR itself that it is a contract between the respondent No.2 and the petitioner and as such the complaint petition of the petitioner that the petitioner borrowed money as loan but failed to return the borrowed money which does not fall under a criminal case.

[4] Mr. Bhattacharjee, learned counsel also contends that the Investigating Officer has submitted charge-sheet under section 406/417 of IPC but on the application for discharge of petition of the petitioner under Section

239 Cr.PC, the learned Trial Court held that prima facie there is ground to proceed against the petitioner U/s 417 of IPC such findings is contrary to law. Learned counsel for the petitioner also placed reliance under Section 161 Cr.P.C Statement of the respondent No.2 and other witnesses where it has been clearly shown that there is some commercial transaction with regard to rubber business between the petitioner and the respondent No.2 and to evade statutory taxes the respondent No.2 and her family members used to pay the price of rubber sheets from various bank accounts but the learned Trial Court also failed to apply the judicial mind in this aspect. Thus, he prayed to secure the ends of justice the order dated 06.03.2024 passed in PRC (WP) 57/2023 is liable to be set aside.

[5] On the other hand, Mr. S. Lodh, learned counsel appearing for the respondent No.2 strongly denied the submission advanced by the learned counsel for the petitioner and submits before this Court that there is no financial transaction on business purpose rather out of their neighborhood relationship the petitioner on many occasions requested the respondent No.2 for financial help for his personal urgent needs and in response of this the respondent No. 2 made the payment on the different dates through bank account. He also submits that the petitioner herein also borrowed money from the son of the respondent No.2. and he further placed reliance on the Statement of under Section 161 Cr.P.C of the respondent No.2 wherein it has been stated that because of their good relationship the petitioner often sought financial assistance from them for his personal needs and the respondent No.2 also fulfilled the request out of their good relation and give loan amount of Rs.63,050/- on 12 occasions. The said petitioner also assured them to return

the borrowed money in front of the witnesses within a stipulated time. But all on a sudden, a case was registered against the son of respondent No.2 and out of fear they ran away and stayed in a rented accommodation in Kolkata. Then on last 05.09.2021 they returned to Agartala and went to the house of the petitioner with local people and prayed for return of the borrowed money. But the petitioner broken their trust and cheated them without paying the borrowed money. He also abuses them and threatened to kill them. Thereafter, on 15.09.2021 in the afternoon the petitioner along with other person ransacked the house of the respondent No.2. at that time respondent No.2 and her daughter in law and a servant were there in her house and they started looking for her son and husband. But as they were not at home the petitioner looted her gold neck chain and Rs. 35,000/-.

[6] Mr. Lodh, learned counsel further submits that the petitioner herein committed three offences first he has deceived the respondent No.2 without paying the borrowed money. Secondly, he threatened to kill them and lastly, by looting the gold chain and Rs. 35,000/- from her. So, he vehemently prayed before this Court the petitioner is liable to face the trial before the Court below and urges to dismiss the case of the petitioner.

[7] Heard and perused the evidence on record.

[8] To examine the present case in hand, it is necessary to extract the relevant provisions of section 406 and section 417 of IPC and accordingly the same are extracted as under:

"406 Punishment for criminal breach of trust "Whoever commits criminal breach of trust shall be punished with

imprisonment of either description for a term which may extend to three years, or with fine, or with both....."

"417 Punishment for cheating – Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

[9] In the complaint dated 13.07.2022 lodged before the learned CJM, Sepahijala Tripura, Sonamura it was stated that the accused person No.01 (petitioner herein) had borrowed loan amounting to Rs.63,050/- (Rupees Sixty Three Thousand Fifty) only through bank account and the accused person (petitioner herein) in presence of witnesses assured the respondent No.2 that the borrowed amount would be refunded within a stipulated time. It was also seen in the complaint that the accused person(petitioner herein) abused the respondent No.2 and her husband with slang languages and a hot alteration occurred between the accused person (petitioner herein) and the respondent. Thereafter, in the complaint it is stated that the complainant (respondent No.2 herein) made a complaint to respected local heads of their village and through respected local heads the respondent No.2 asked the accused person(petitioner herein) to refund back the borrowed amount but the petitioner did not refund the same.

[10] In the statement of the Complainant dated 14.07.2022 recorded U/s 161 Cr.PC. also it is stated that she and her husband had a good relation with Mr. Subash Debnath (petitioner herein) who is/was a rubber trader of the same area because of this good relation , the said Subash Debnath (petitioner herein) often sought financial help from them for personal needs and

accordingly between 07.05.2021 and 09.08.2021 because of good faith they gave loan of Rs. 63,050/- from the bank account of complainant to the petitioner herein on 12 occasion. Though it is mentioned that the petitioner herein along with other unidentified person illegally entered their house and looted some her golden ornaments etc. but the complainant admitted that she did not file any case before the nearby police station.

[11] Finally in the statement of the complainant dated 20.12.2022 recorded under Section 161 Cr.P.C, it is stated by the complainant that her husband is/was a rubber trader by profession. Because of that her husband and she had a good relation with the accused person (petitioner herein) who was rubber trader of the same area. The accused petitioner herein used to bring rubber sheet from various places to them and sell those to them. For the purpose of reference the translated copy of the same statement is extracted herein under:-

" On inquiry, I told my name, address, Occupation- Housewife, qualification- Class V pass. My husband Shri Sentu Dey is a rubber trader by profession. Because of that, my husband and I had a good relation with Mr. Subhash Debnath S/O Late Hare Krishna Debnath, a rubber trader of the same area. Mr. Subhash Debnath used to bring rubber sheet from various places to us and sell them to us immediately and after a few days the money was given to him. The money transactions are sometimes given from hand to hand and sometimes deposited in the bank account of Subhash Debnath. Accordingly, from last dated 07.05.2021 to 09.08.2021 at various occasion I have transfer through my bank account number 10200008024828 and 502000018542164 Bandhan Bank to Subhash Debnath account number 8010092724625 (TGB) and Axis bank amount of Rs. 10,000/- 5000/-, and 3000/- rupees many times as a loan to Subhash Debnath. Later, Subhash

Debnath promised me and my husband in presence of other rubber traders Mr. Narayan Debnath and Mr. Ganesh Debnath that he will return back the money in total Rs. 63,050/- without any delay. But Subhash Debnath broke our trust and cheated us without returning back the money. At the time of paying the money no paper affidavit or promise was taken. For the sake of long term business relation Subhash Debnath was given the money. There had been disputes on several occasions regarding the monetary transaction."

[12] From the above extracted translated statement dated 20.12.2022, it is observed that complainant and her husband had a business relation with the accused person (petitioner herein) but in the complaint dated 13.07.2022 and statement dated 14.07.2022, the same was not disclosed by the complainant. Thus, this court finds that there are discrepancies in the aforesaid complaint dated 13.07.2022 and statements of u/S 161 Cr.P.C dated 14.07.2022 and 20.12.2022. Since in the aforementioned statement of the complainant dated 20.12.2022 it was mentioned that there had been business relationship with the complainant and accused person (petitioner herein), this Court opines that the case in hand seems to be civil in nature and thus, sections 406 and 417 of IPC do not constitute for adjudication of the matter.

[13] In view of the above, the impugned order dated 6.03.2024 passed by the learned Court below rejecting the petition under section 239 Cr.P.C. for discharging the accused person (petitioner herein) from the liability of offences u/S 417 of Cr.P.C is hereby set aside. Accordingly, the charge-sheets under Sections 406 and 417 of IPC filed against the accused person (petitioner herein), is also hereby quashed, and the petitioner is discharged from the charges leveled against him U/s 406 and 417.

[14] With the above observation, the present petition is hereby allowed and accordingly, the same is disposed of. However, the complainant (respondent No.2) herein would be at liberty to avail remedy under law.

As a sequel, miscellaneous application(s) pending if any, shall stand closed.

JUDGE

RAJKUMAR
SUHANJIT SINGHA

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Digitally signed by RAJKUMAR
SUHANJIT SINGHA
Date: 2024.08.16 16:28:11
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Paritosh



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