

GAHC010229912023



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

**Case No. : W.P.(Crl.)/37/2023**

ANJALI BORGOHAIN  
W/O- LT. (CAPTAIN) L.P. BORGOHAIN,  
RESIDENT OF -  
R/O HOUSE NO. 1, S.K. BARUA ROAD,  
RUKMINI NAGAR, P.S.- DISPUR-06, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS  
REPRESENTED BY PRINCIPAL SECRETARY,  
DEPARTMENT OF HOME AFFAIRS,  
ASSAM, DISPUR-6.

2:SANJEEV BORGOHAIN  
S/O- LT. (CAPTAIN) L.P. BORGOHAIN  
RESIDENT OF-  
R/O- HOUSE NO.- 01  
S.K. BARUA ROAD  
RUKMINI NAGAR  
DISPUR  
KAMRUP(M)  
P.S.- DISPUR  
PIN- 781006  
ASSAM.

3:COMMISSIONER OF POLICE  
KAMRUP(M)  
GUWAHATI-1  
ASSAM

Linked Case : I.A.(Civil)/831/2024

SANJEEV BORGOHAIN  
S/O- LT. (CAPTAIN) L.P. BORGOHAIN  
RESIDENT OF-  
R/O- HOUSE NO.- 01  
S.K. BARUA ROAD  
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VERSUS

ANJALI BORGOHAIN AND 2 ORS  
W/O- LT. (CAPTAIN) L.P. BORGOHAIN  
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ASSAM.  
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For the Petitioner/Opposite Party No. 1 :- Mr. I. Singh .....Advocate

For the Respondent Nos. 1 & 3/Opposite  
Party Nos. 2 & 3 :-Mr. D. Nath, Senior Government  
Advocate

For the Respondent No.2/Applicant :- Mr. G. Choudhury  
.....Advocates

Date of Hearing : 24.06.2024

Date of Judgment : 17.07.2024

**BEFORE  
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

**JUDGMENT AND ORDER (CAV)**

In this petition, under Article 226 of the Constitution of India, the petitioner, namely, Mrs. Anjali Borgohain, has prayed for quashing and setting aside of the 'F.I.R.' of Dispur P.S. Case No. 2536 of 2022 dated 02.12.2022, under Sections 419,420,468,471 and 34 IPC, lodged by respondent No.2, Mr. Sanjeev Borgohain.

**02.** The background facts, leading to filing of the present petition, are adumbrated herein below:-

"The petitioner, Mrs. Anjali Borgohain, is the widow of Ex-Serviceman, Late Captain Laxmi Prasad Borgohain, who served in Border Security Force (BSF) as Commandant and received President's Police Medal for his meritorious service. Late husband of the petitioner had constructed a G + 1 (one) storied building at Rukmini-Nagar, Guwahati, in the district of Kamrup (M), Assam, and the said property is under the possession of the petitioner, where she is residing along with her children, including the informant/respondent No.2, when they were young and not married. Mr. Samant Borgohain is the eldest son of the petitioner,

who has been provided with the 1st floor of the shared-building and Mr. Shantanu Borgohain is the 2nd son of the Petitioner, who stays separately with his family, as he works in a Tea-Estate. The respondent No.2, Mr. Sanjeev Borgohain, is the youngest son of the petitioner and he stays on the shared ground- floor with the petitioner.

After the demise of the petitioner's husband, the petitioner and all her children agreed that the 2nd floor of the building will be given to Mr. Shantanu Borgohain, the 2nd son of the petitioner, for his own accommodation and hence to complete the construction of the said floor, Mr. Shantanu Borgohain, the 2nd son of the petitioner, took two loans, amounting Rs. 27,08,526/-in the year 2016, from UCO Bank, which was later taken over by ICICI Bank and another top-up loan from ICICI Bank, amounting Rs. 26,32,094/-was taken in the year 2018. The petitioner and her sons were the co-applicants of the said loans. The said loan was taken by mortgaging the said property of Lt. (Captain) L.P. Borgohain. After taking these loans Mr. Santanu Borgohain had defaulted in making the payments of the loans to the ICICI Bank, as he had lost his job of Tea-Estate Manager, due to the Covid-19 Pandemic. Thereafter, legal notices were issued to all the applicants to the loan, by the bank officials and then the respondent No.2, Shri Sanjeev Borgohain, taking advantage of the arduous, unfortunate and unfavorable condition, caused by the Covid-19 Pandemic, compelled his own brother Santanu Borgohain to give up his own share in the property left behind by

the petitioner's husband Lt. (Captain) L.P. Borgohain and promised to take over the said loan by entering into a notarised agreement on 17th day of March' 2020. Thereafter, the respondent No.2, Mr. Sanjeev Borgohain, took over the two bank loans and also took the respective share of Mr. Santanu Borgohain in the shared property by coercing and threatening him that if Santanu Borgohain did not give his respective share in the property, then he would file a complaint/F.I.R. against him alleging that he has taken the said loans by committing fraud and hence the Santanu Borgohain had entered into a notarised agreement with the Informant. Thereafter, the Informant had demanded more shares in the property. Having no other option, in view of the unfavorable circumstances, Santanu Borgohain had agreed to the demands of the Informant, and entered into a notarised agreement and transferred both the loans and his respective share in the property to the respondent No.2, whereby, the respondent No.2 had agreed to repay the principal loan amount along with the additional interest. Thereafter, the respondent No.2 and his wife started eyeing up the petitioner's share in the property and when the petitioner expressed her desire to give her own share of the property to Santanu Borgohain, who was homeless by then, the respondent No.2 revolted and stated that the petitioner cannot do that, and he had created/manufactured a fabricated "will" of Lt. (Captain L.P. Borgohain) to claim ownership of the petitioner's share in the property. The Informant, and his family are deliberately staying with the petitioner in the ground floor of the

building in spite of taking possession of the 2nd floor of the building and he has been subjecting the petitioner to physical and mental torture and when the violence became too much for the petitioner to bear, she chose to move out from her own home and took a rented accommodation nearby. She had filed one case under Domestic Violence Act before the learned Chief Judicial Magistrate, Kamrup (M) Guwahati, being Misc. Case No. 145/2022, under Section 12 of the said Act on 13.07.2022, wherein vide order dated 16.07.2022, the learned court had granted some interim relief to her. Thereafter, the Informant had lodged a false complaint on 02.12.2022, before the Dispur Police Station, alleging that the petitioner and her two other sons, namely, Samant Borgohain and Santanu Borgohain have forged his signatures to obtain two loans from the bank. Upon the said complaint the Officer-in-Charge Dispur Police Station had registered a case being Dispur P.S. Case No. 2536/2022, under Sections 419, 420, 468 and 471, read with Section 34 IPC (hereinafter, 'Concerned FIR') is a counterblast of the domestic violence proceedings initiated by the petitioner against her son, respondent No.2.

**03.** Being aggrieved, the petitioner has approached this court for quashing and setting aside the said FIR, of Dispur P.S. Case No. 2536/2022, under Sections 419, 420, 468 and 471 read with Section 34 IPC, on the following grounds:-

(I) That, allegations made in the FIR against the petitioner do not prima-facie indicates the basic ingredients, constituting the offence as

alleged in the FIR and the impugned F.I.R is hit by the doctrine of estoppels.

- (II) That, the nature of the allegations mentioned in the FIR does not indicates valid, sufficient and reasonable grounds for initiating legal proceedings against the septuagenarian petitioner, who is suffering from myriad old age diseases;
- (III) That, the accusations made against the petitioner is false and frivolous and made with mala fide intentions;
- (IV) That, there is substantial glaring deception, fabrication and prevarication on the part of the Informant in lodging of the said impugned F.I.R. dated 02/12/2022 by the respondent No.2 against the petitioner, who happened to be his own mother.
- (V) That, the F.I.R. was lodged after a gap of 6 (six) years, without even giving a valid reason for this inordinate delay at Dispur Police Station, as such, the same deserves to be set aside and quashed;
- (VI) That, to constitute an offence under Section 419, 420, 468, 471 and 34 of I.P.C., *mens rea* is a necessary ingredient and in this case the petitioner will gain nothing by committing cheating and forgery against her own son and there is no *mens-reas* at

all;

- (VII) That, the petitioner, who is at her last stage of her life, only wants to see her children succeeding in their life and wants to distribute the property constructed by her Lt. husband, equally amongst her 3 (three) sons. However, the respondent No.2 does not want the petitioner to do that.
- (VIII) That, the false F.I.R. has been filed by the respondent No.2 only after passing of the "protection orders" by the Ld. JMFC-3 at Kamrup (M), in Misc. Case No. 145 of 2022, as, in the said order dated 16.07.2022, the respondent No.2 was directed to remove his ferocious dogs from the ground floor, which made the Informant furious and out of anger and hatred against his own mother the respondent No.2 has filed this false F.I.R.
- (IX) That, in the Misc. Case No. 145 of 2022, which is pending disposal before the Ld. JMFC-3 at Kamrup (M), the informant, has filed his joint "written statements" along with his wife on "16.09.2022" and in para no.8 of their joint written statements they have annexed a "notarised agreement" dated 17.03.2020, which the informant has entered into with Mr. Santanu Borgohain, who had initially availed the two loans mentioned in the impugned F.I.R. and at para No.8 of the joint written-statements filed by the respondent No.2 and his wife have stated that-

"In the year 2016 and 2018 the Original Accused No.3 availed two loans, which are mentioned in para no.8 of this petition and, when, Accused No.3 defaulted in making the EMI payments of the said loan amount to the bank, he entered into an notarised agreement with the Respondent No.2/Informant, where the Accused No.3 had relinquished all his rights and interest in the said property and from then, the Respondent No.2/Informant, took over the said loan and re-paid backlogs in the year 2020 of the defaulted loans, and is still repaying the EMIs with an objective of repaying the total principal loan amount, the entire outstanding amount and additional interest on the loan to the Bank

- (X) That, the respondent No.2 and his wife in their joint written statement had nowhere taken a stand that the said loans have been taken by committing fraud or by cheating. It is only when the petitioner, out of natural love and affection, tried to give her share of the property to Santanu Borgohain, who is now a homeless and also after filing of the domestic violence case against the respondent No.2, the impugned F.I.R. was filed by him out of greed, frustration and anger so that he can compel the petitioner to enter into a compromise with him, by deliberately refusing to pay the remaining EMIs' and by saying that the said loan has been taken by committing fraud upon him.
- (XI) That, the respondent No.2 had clear knowledge about the loan being taken by Santanu Borgohain, since 2016, itself and when he defaulted in making payments to the bank, the respondent No.2 had undertook the responsibility of paying back the said

loans in the year 2020 by executing a notarised agreement, and as such the question of cheating the respondent No.2 and that he was impersonated by someone, and that he came to know about the same only recently in the year 2022, cannot be believed.

(XII) That, the impugned F.I.R. has been filed only after passing of the interim-relief in Misc. Case No. 145 of 2022, by the Ld. JMFC-3, at Kamrup (M) at Guwahati, reflecting the mala fide intentions of the respondent No.2, who wants to harass the petitioner and has warned the petitioner that if she chooses to transfer her share of the property, to someone else, then the petitioner and the other co-accused will have to bear the financial burden to repay the loans.

**4.** The respondent No.2 has not filed any affidavit-in-opposition. But, he has filed an Interlocutory Application for vacation or/alteration/modification of the interim order dated 06.11.2023. It is to be noted here that vide order dated 06.11.2023, further investigation of Dispur P.S. Case No. 2536/2022, was stayed till returnable date.

**5.** It is also to be noted here that in the said application the respondent No.2 has stated that the opposite party/petitioner has mislead this court and given an impression that the FIR was frivolous. It is also stated that he is the victim of well orchestrated conspiracy that can be un-earthed when a proper police

investigation is carried out. Further, it is stated that on requisition of the Investigating Officer, examination of the signature of the applicant and the disputed signature appearing in the loan documents, were examined by FSL and it has been opined that the signature of the loan documents does not tally with the signature of the applicant, which shows that loan documents were forged by the accused persons named in the FIR. It is also stated that the FIR disclosed a cognizable offence and as such the same cannot be quashed at this stage and therefore, it is contended to allow the application and to vacate the interim order and to allow the investigating agency to complete investigation.

**6.** Having proposed to dispose of the writ petition and also interlocutory application together, I heard Mr. I. Singh, learned counsel for the petitioner and opposite party No. 1 in the Interlocutory Application. Also heard Mr. G Choudhury, learned Counsel for the respondent No. 2 and applicant in the Interlocutory Application. Also heard Mr. D. Nath, learned Sr. Government Advocate for the respondent Nos. 1 and 3 in the writ petition and opposite party Nos. 2 and 3 in the Interlocutory Application.

**7.** Mr. I. Singh, learned Counsel for the petitioner, besides reiterating the points mentioned herein above, submits that the FIR of Dispur P.S. Case No. 2536/2022, under Sections 419, 420, 468 and 471 read with Section 34 IPC, is the counterblast of Misc. Case No. 145 of 2022, filed by the petitioner before the Ld. JMFC-3, at Kamrup (M), Guwahati. Mr. Singh further submits that the petitioner is the mother of the Informant and she was subjected to both physical and mental harassment by the Informant and his only intention is to grab her part of the property, which she had decided to give to her another son

namely, Santanu Borgohain, who is rendered homeless by now and with mala-fide intention he lodged the FIR. Mr. Singh also submits that the loans were obtained in the year 2016 and 2018, respectively, and the respondent No.2 is well aware of the same and the same was taken with his consent and that his contention that he came to know about the same only in the year 2022, is absolutely false and there is inordinate delay in lodging the FIR without any explanation and that in the joint written statement submitted by the respondent No.2 and his wife in the Misc. Case No. 145 of 2022, clearly indicates that same. Mr. Singh also pointed out that the respondent No.2 had agreed to pay the loans by one notarized agreement and the said agreement was enclosed with the written statement by the respondent No.2 and as such the FIR is hit by the doctrine of estoppels. Mr. Singh also submits that the allegations, leveled in the FIR are false and frivolous and the same was lodged with mala-fide intention and therefore, it is contended to allow the petition by setting aside and quashing the impugned FIR. Mr. Singh has referred following case law in support of his submission:-

(i) **Mariam Fasihuddin and Ors. vs. State and Ors.**  
reported in MANU/SC/0051/2024.

**8.** Whereas, Mr. G. Choudhury, the learned counsel for the respondent No. 2 submits that the power of High Court under Section 482 Cr.P.C. and Article 226 of the Constitution of India, to quash an FIR, has been circumscribed in catena of decisions, more particularly in the case of - **State of Haryana Vs. Bhajan Lal, reported in 1992 Supp (1) SCC 335, and in M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & Ors.,**

reported in (2021 SCC OnLine SC 315). And the present case does not fall under any of the category of the cases wherein the FIR cannot be quashed. Mr. Choudhury further submits that a bare perusal of the FIR discloses a prima-facie case against the petitioner and her two sons that forging the signature of the respondents No.2, two loans were obtained and that correctness or otherwise of the same can be determined only during trial. Mr. Choudhury, therefore, contended to dismiss the petition. In support of his submission, Mr. Choudhury has referred following two case laws:-

- (i) Kamal Shivaji Pokerneker vs. State of Maharashtra and Others, reported in (2019) 14 SCC 350.
- (ii) V. Ravi Kumar vs. State reported in AIRONLINE 2018 SC 954

**9.** On the other hand, Mr. D. Nath, learned Senior Government Advocate, Assam appearing for respondent Nos. 1 and 3, producing the Case Diary of Dispur P.S. Case No. 2536 of 2022 before this court, submits that the investigation conducted till staying of the same by this court indicates a prima-facie case. Mr. Nath further submits that the I.O. had sent disputed signature of the informant and his admitted signature to the FSL and the report thereof indicates mismatching of the same. Mr. Nath, therefore contended to dismiss the petition. Mr. Nath also referred to a decision of Hon'ble Supreme Court in **Munshiram v. State of Rajasthan, (2018) 5 SCC 678**, wherein Hon'ble Supreme Court has stated as under:-

“12. In light of the fact that the enquiry was pending and there are aspects which may require investigation, we are of the considered opinion that the High Court erred in quashing the FIR at the threshold itself without allowing the investigation to proceed. We cannot agree with the reasons provided under the impugned judgment concerning certain factual assertions made by the respondents as to the condition of the deceased and reasons for committing suicide because acceptance of the said would not be in consonance with the settled jurisprudence under Section 482 Cr.P.C. as laid down by various judgments of this Court.”

**10.** Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the Case Diary of Dispur P.S. Case No. 2536 of 2022, and also perused the impugned FIR which is sought to be quashed in this proceeding.

**11.** Before a discussion is directed in to the issues raised in this petition, it would be apposite to understand the scope and jurisdiction of High Court to quash an FIR by excising the power under Article 226 of the Constitution of India. The lead case in this regard is *State of Haryana and Others vs. Bhajan Lal and Others reported in 1992 Supp(1) SCC 335*, where in Hon’ble Supreme Court, having discussed its earlier decisions, on the subject, has held in para No. 102 as under:-

“In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent 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 guide- i7 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

their 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 F.I.R. 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 in the FIR do not constitute a cognizable offence but constitute only 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 concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, 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.

**12.** Thereafter, a three Judges Bench of Hon'ble Supreme Court in the case of In the case of M/s Neeharika Infrastructure Pvt. Ltd. (supra), while

dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;
- viii) Ordinarily, the courts are barred from usurping the

jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

- ix) The functions of the judiciary and the police are complementary, not overlapping;
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;
- xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;
- xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;
- xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the

self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (*supra*) and BhajanLal (*supra*), has the jurisdiction to quash the FIR/complaint;

- xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;
- xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/charge sheet is filed under Section 173 Cr.P.C., while dismissing /disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.
- xvii) Even in a case where the High Court is *prima facie* of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after

considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.

**13.** The proposition of law that can be crystallized from the discussions made here in above is that the High Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint. At the initial stage, it cannot be said that the FIR/complaint did not disclose the commission of a cognizable offence, as at this stage, the facts are hazy. The petitioner has to make out a very exceptional circumstance to interfere with the case at the very threshold. Whether the factual foundation of the offences alleged as made in the complaint would be sufficient to disclose the ingredients of the offences against petitioners has to be considered at the stage of trial. Such an enquiry cannot be embarked upon at initial stage.

**14.** Bearing above proposition of law in mind, now an endeavour will be made to find out whether the petitioner has succeeded in establishing a very exceptional circumstance, so as to invoke the extra ordinary jurisdiction of this court, under Article 226 of the Constitution of India.

**15.** That, a careful perusal of the FIR of Dispur P.S. Case No. 2536 of 2022, dated 02.12.2022, under Sections 419, 420, 468,471 and 34 IPC, reveals following facts and circumstances:-

- (i) That, the present petitioner is the mother of the informant Sanjeev Borgohain and he has two brothers namely, Samant Borgohain and Santanu Borgohain.
- (ii) The respondent No.2 is a service man and he was posted at Itanagar in the month of March, 2018.
- (iii) Without his consent, knowledge and presence, his mother and two brothers, named above, impersonated him and by forging his signature availed two loans, one housing loan, for a sum of Rs. 27,08,526/- from UCO- Bank, which was taken over by ICICI Bank later on, against loan account No. LBGUW00004412299, in the year 2016, and thereafter, another top up loan, for a sum of Rs. 26,32,094/- against loan account No. LBGUW00004412296 of ICICI Bank, in the year 2018.
- (iv) That, the forged signature of the respondent No.2 was used to make him as co-applicant in both the loans mentioned above;
- (v) That, in obtaining the aforementioned loans, the joint property, including ground floor and first floor of their residential building, belonging to the petitioner and the respondent No.2 and his two brothers was notorised;
- (vi) That, in the month of May 2022, the petitioner and two brothers of the respondent No.2 had threatened to sell off the said

property without his consent and without discussing the matter with him.

- (vii) That, since the death of the father of the respondent No.2, his mother has been harassing him and his family with the help of his two brothers, who were not staying in the said house.
- (viii) That, police complaints were also lodged earlier on 06.06.2022, and 27.07.2022, and thereafter on 04.06.2022, his wife lodged another complaint against the petitioner and two brothers of the respondent No.2.

**16.** Notably, the petitioner has denied the assertion made in the said FIR and her contention is that the FIR is the counterblast of the proceeding under Domestic Violence Act, lodged by her against the Informant.

**17.** But, the above mentioned averments, so made in the FIR, if taken at their face value, it cannot be said that no prima-facie case is made out against the present petitioner. Moreover, from a perusal of the Case Diary, so produced before this court by Mr. D. Nath, learned Senior Govt. Advocate reveals that some materials were collected during investigation, before it was stayed by this court. It also appears that the I.O. had collected specimen hand writing and sent the same to the FSL for examination and the report thereof was also collected which is available in the Case Diary and the same indicates mismatching of the signature of the informant with the disputed signature in the loan application. This fact further lends credence to the averments made in the petition.

**18.** This court has considered the submission of Mr. Singh, learned counsel for the petitioner. There may be substance in his submission that the FIR of Dispur P.S. Case No. 2536/2022, under Sections 419, 420, 468 and 471 read with Section 34 IPC, is the counterblast of Misc. Case No. 145 of 2022, filed by the petitioner before the Ld. JMFC-3, at Kamrup (M), Guwahati. But, this is a stand taken by the petitioner in her defence which can be considered only during trial. Moreover, as discussed herein above, the averments so made in the FIR are disputed by the petitioner. It is well settled that disputed question of facts cannot be adjudicated in a writ petition, which, in fact, requires a full flagged trial. Reference in this context can be made to the case of *Bhajan Lal*, (*supra*). I have also gone through the decision of Hon'ble Supreme Court in *Mariam Fasihuddin* (*supra*) referred by him and I find that the ratio laid down therein, would not be applicable in all force to the facts herein this case. It is to be noted here that in the said case the forensic report was obtained from a private laboratory. But, in the instant case the report was obtained by the I.O. from a government forensic science laboratory. There is, however, delay in lodging the FIR as submitted by Mr. Singh. While the loans were taken in the year 2016 and 2018, respectively, the FIR was lodged on 02.12.2022. But, this aspect also has to be considered at the stage of trial.

**19.** That, as regard the submission of Mr. Singh in respect of estoppels, this court afraid, this principle of evidence is not applicable in the present case. The issue of estoppels was dealt with by Hon'ble Supreme Court in the case of *Masud Khan v. State of U.P.*, (1974) 3 SCC 469, as under:-

"4. But that apart, this matter could be decided on another point. The question of issue-estoppel has been considered by this Court in *Pritam Singh v. State of Punjab* [AIR 1956 SC 415], *Manipur Administration v. Thokchom Bira Singh* [AIR 1965 SC 87] and *Piara Singh v. Staff of Punjab* [(1969) 1 SCC 379]. Issue-estoppel arises only if the earlier as well as the subsequent proceedings were criminal prosecutions. In the present case while the earlier one was a criminal prosecution the present is merely an action taken under the Foreigners (Internment) Order for the purpose of deporting the petitioner out of India. It is not a criminal prosecution. The principle of issue-estoppel is simply this: that where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or res judicata against the prosecution not as a bar to the trial and conviction of the accused for a different or distinct offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by law. *Pritam Singh* case was based on the decision of the Privy Council in *Sambasivam v. Public Prosecutor, Federation of Malaya* [(1950) AC 458]. In that case Lord MacDermott speaking for the Board said:

"The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication."

It should be kept clearly in mind that the proceeding referred to herein is a criminal prosecution. The plea of issue-estoppel is not the same as the plea of double jeopardy or *autrefois acquit*. ...."

- 20.** The factual scenario, in the case in hand, is quite different so as to apply the aforesaid principle. The petitioner also could not show any extra ordinary and exceptional circumstances to invoke the extraordinary jurisdiction of this court under Article 226 of the Constitution of India.

**21.** I have considered the submission of Mr. Choudhury, learned counsel for the respondent No.2 and also gone through the case laws referred by him and I find substance in his submissions. Also, I have gone through the decision in *Kamal Shivaji Pokerneker (supra)* wherein, Hon'ble Supreme Court has held that correctness or otherwise of the allegation has to be ascertained during trial and the court has to see prima-facie case only. In the case of *v. Ravi Kumar (supra)* it has been held that the power under Section 482 Cr.P.C. has to be exercised only to prevent abuse of the process of law and when the allegations, even if true, would not constitute an offence and/or were frivolous and vexatious on their face. It is wholly impermissible to enter into factual arena. But, said observations were made while dealing with a petition under Section 482 Cr.P.C. The present petition is filed under Article 226 of the Constitution of India and not under Section 482 Cr.P.C.

**22.** Further, I find force in the submission of Mr. Nath, the learned Sr. Govt. Advocate and the ratio laid down in the case referred by him also supported his submission. But, said observations were also made while dealing with a petition under Section 482 Cr.P.C, not a petition filed under Article 226 of the Constitution of India. Both, the provisions, to the considered opinion of this court, cannot be read as alternate to each other.

**23.** Thus, in view of above discussions and finding, and also in view of the submissions advanced at the Bar, I find this writ petition devoid of merit, and accordingly, the same stands dismissed. However, the interlocutory application I.A.(Civil) No. 831/2024 stands allowed and the interim order dated 06.11.2023, passed in the writ petition, stands vacated. The parties have to bear their own

cost.

**JUDGE**

**Comparing Assistant**