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**(2000) 04 GAU CK 0002**

**Gauhati High Court (Kohima Bench)**

**Case No:** Criminal Revision No. 1 (K) of 2000

Zhenito Sumi

APPELLANT

Vs

State of Nagaland

RESPONDENT

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**Date of Decision:** April 7, 2000

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 403

**Citation:** (2000) 2 GLT 427

**Hon'ble Judges:** W.A. Shishak, J

**Bench:** Single Bench

**Advocate:** Kakheto Sema and Khekuto Sema, for the Appellant; Y. Longkumar and Lucy, Public Prosecutor, for the Respondent

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### **Judgement**

W.A. Shishak, J.

Heard Mr. Kakheto, learned Counsel for the Petitioner as well as Mrs. Y. Longkumar and Ms. Lucy, learned Public Prosecutor for the Respondent.

2. Criminal prosecutor has been launched against the Petitioner vide G.R. No. 69/98, u/s 403 IPC consequent to the filing of FIR before the Officer-in-Charge at Zunheboto. Case was registered on 13.12.1998 though FIR is dated 3.9.1997. FIR states that the Petitioner has taken Village Development Board loan of Rs. 33,000/-. To make the story, it may be Stated that the fact that loan of Rs. 33,000/- was taken by the Petitioner is not denied. The case of the Petitioner is that, he had returned the entire loan amount taken by him.

3. In the present petition, the Petitioner is seeking a direction for quashing the criminal proceeding now pending before the learned Addl. Deputy Commissioner (Judicial), Zunheboto, firstly, on the ground that, in the present facts and circumstances, no criminal proceeding can be launched against the Petitioner, and if at all there is any liability to be fixed upon the Petitioner, such liability would be purely of civil nature. Secondly, it is also submitted that, though it is alleged that the

matter came to light some time in 1994, the FIR in the present case was registered only in 1998 December. Nowhere the delay in submitting the FIR has been explained. Therefore, it is submitted by learned Counsel for the Petitioner that, even assuming that there is some element of criminal nature, delay in launching the prosecution would defeat the entire case.

4. I have perused the case diary. I have also gone through some of the statements recorded by the Investigating Officer and also the charge sheet subsequently submitted against the Petitioner. The submission made by Mr. Kakheto, learned Counsel to the effect that the Petitioner took a loan of Rs. 33,000/- after following procedure laid down in this regard is reflected even in the charge sheet inasmuch as it is stated to have been withdrawn after necessary resolution was passed by the Village Development Board.

5. It appears the primary concern in the present case should be recovery of the amount of loan said to have been taken. In this regard, I may state that, if loan amount has not been repaid, it is open to the appropriate authority to seek remedy in appropriate forum to recover such loan and in such a situation, it is for the Petitioner to defend himself and to establish that he has indeed repaid the loan taken by him.

6. Looking to the entire facts and circumstances, I am inclined to say that the case is of civil nature inasmuch as it concerns recovery of loan amount. If that be so, criminal proceedings cannot continue. Even otherwise. I am of the view that the delay in launching criminal proceeding has nowhere been explained. Should the appropriate authority seek remedy to recover loan amount taken by the Petitioner, no plea of limitation shall be allowed to stand in the way.

7. With the above reasons and observations, this petition is disposed of. The proceeding in GR No. 69/98 U/S 403 IPC is quashed.