

GAHC040012702022



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

CRIMINAL PETITION No.110 (AP)/2022

Shri Kemmar Kamsi
Son of Late Goken Kamsi, resident
Of Doyor Village, P.O & P.S. Aalo,
West Siang District, Arunachal Pradesh.

...Petitioner

-Versus-

1. The State of Arunachal Pradesh,
through its Public Prosecutor.

2. Shri Tako Koje,
Son of Late Yorsang Koje, resident
Of Puakgumin, P.O. & P.S. Aalo,
West Siang District, Arunachal Pradesh.

...Respondents

For the Petitioner : Mr. G. Taloh
For respondent No.1 : Mr. J. Tsering, PP
For respondent No.2 : Ms N. Danggen

- B E F O R E -

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 01.08.2023

Date of Judgment : 11.08.2023.

JUDGMENT & ORDER (CAV)

Heard Mr. G. Taloh, the learned counsel for the petitioner. Also heard Mr. J. Tsering, the learned Public Prosecutor for the State respondent and Ms. N. Danggen, the learned counsel for the respondent No.2.

2. This is an application filed under Section 482 of the Cr.P.C for quashing of compliant case No. 10/2022 under Sections 419/420/468/471 of the Indian Penal Code pending before the learned Chief Judicial Magistrate, Aalo, West Siang District, Arunachal Pradesh and the order dated 27.09.2022 passed by the learned Chief Judicial Magistrate, Aalo, West Siang District, Arunachal Pradesh.

3. It is stated that the compliant case No.10/2022 was filed by the respondent No.2 before the Court of learned Chief Judicial Magistrate, Aalo, West Siang under Sections 419/420/468/471 IPC against the present petitioner. The gist of the content is that the respondent No.2 owns a Wet Rice Cultivation (WRC) field measuring 22,500 Sq.mtrs near Pakam village. In the year 2001, he sold about 300 Sq.mtrs from 22,500 Sq.mtrs to the petitioner for Rs.20,000/- (Rupees twenty thousand only), although no documents regarding the

transaction was executed between them, however, he had put his signature on a blank paper. Subsequently, one Kartum Loyi and Karyom Loyo lodged a complaint before the Deputy Commissioner, Aalo informing that they had purchased the land from petitioner No.1 for Rs. 1,30,000/- (Rupees One Lakhs thirty thousand only) on 31.01.2004 and thus, praying for restraining the respondent No.2 from encroaching and disturbing their peaceful possession. The respondent No.2 submitted his reply against the complaint filed before the Deputy Commissioner, Aalo and stated that he never sold any plot of Wet Rice Cultivation (WRC) land to the petitioner. Thereafter, on receiving notice on 05.11.2020 from the Office of the Deputy Commissioner, the respondent No.2 filed an RTI and accordingly, it has come to notice that entire Wet Rice Cultivation (WRC) land was sold to Shri Karyom Loyi for a consideration of Rs. 1,30,000/- on the strength of a forged sale agreement dated 20.07.1994. Thereafter, he filed an application dated 22.02.2022 before the Deputy Commissioner, Aalo wherein, it was informed that the Office of Deputy Commissioner has no jurisdiction to take cognizance of the title dispute and accordingly, advised for approaching the appropriate forum. Thereafter, the compliant case was filed before the learned Chief Judicial Magistrate, Aalo. The learned Chief Judicial Magistrate, Aalo accordingly, after examining the complainant along with one witness took cognizance under Sections 420/468/471 of the IPC vide order dated 27.09.2022.

4. It is further submitted by the learned counsel for the petitioner that the complaint filed by the respondent No.2 is totally false and based on concocted facts and he has also converted a civil dispute about the ownership of land into a criminal proceeding by misusing the judicial process. In the year 1994, the

respondent No.2 had sold his Wet Rice Cultivation (WRC) land and Jhum land to the petitioner for consideration of Rs.1,05,000/-(Rupees one lakhs five thousand only) and sale agreement was executed on 20.07.1994. The sale agreement was also signed by the respondent No.2 along with 4 witnesses and counter signed by Circle Officer-cum-Judicial Magistrate, Judicial Magistrate First Class, Along, West Siang District, Along. Further, it is stated that the Wet Rice Cultivation (WRC) land mentioned in the sale deed dated 20.07.1994 and the complaint case made by the respondent No.2 is for the same plot of land. Therefore, the plot of land which is the crux of the complaint, pending before the learned Chief Judicial Magistrate, Aalo was already sold in the year 1994. But after 28 years, the respondent No.2 is attempting to give it a criminal colour by misusing the criminal machinery with his malafide intention. The respondent No.2 misled the Court of learned Chief Judicial Magistrate, Aalo and for which the cognizance was taken against the present petitioner.

5. The respondent No.2 had executed the sale agreement on 20.07.1994 before the Circle Officer-cum-Judicial Magistrate First Class but he had falsely stated that he had only signed on some blank paper and there was no agreement between the parties. On one hand, it is stated on the complaint that he became aware about the agreement dated 10.07.1994 in the year 2010 when he received a notice but on other hand he came with a plea that he became aware about the sale deed after RTI application filed in the year 2020. Further, he was aware about the sale of entire Wet Rice Cultivation (WRC) to Shri Karyom Loyi since 2004 and even if it is disputed, in that case also he was aware about the fact on 08.01.2010 from the order passed by the Deputy Commissioner, Aalo. The Deputy Commissioner, Aalo also reminded him about

his sale of the land vide agreement dated 20.07.1994 and was also directed him to stop any illegal activities over the said land. Thereafter, another order also was passed in 05.11.2020 reiterating the same. More so, Keba was also held on 29.01.2013 between the respondent No.2 and Shri Horba Loyi, Head Gaon Bura wherein, it was clearly stated that the plot of land was in possession of Shri Karyom Loyi and the land was sold in 2004 but no complaint was made by the respondent No.2 in spite of Keba decision in favour of the Shri Karyom Loyi.

6. Improbability of the false allegation made by the respondent No.2 becomes apparent from the perusal of the sale deed dated 20.07.1994 and thus, the learned Chief Judicial Magistrate had erroneously taken cognizance against the present petitioner though there are no ingredients *prima facie* made out to attract Section 420/468/471 IPC. However, the respondent No.2 has miserably fail to cast a reasonable apprehension over the authenticity of the agreement dated 20.07.1994 and except the statement of respondent No.2 that the document is false, there is nothing which can even slightly dent the authenticity of the document. More so, there is nothing in the petition whereby, the respondent No.2 can even prove that the sale deed dated 20.07.1994 is fake and forged and this dispute is purely civil in nature and there is no need of criminal proceeding where the title is already being disputed and adjudicated by a civil suit being Title Suit No. 12/2022 which is pending before the learned Civil Judge Sr. Division, Aalo for declaration of sale deed dated 20.07.1994 as null and void. Even for the sake of argument, if it is admitted that he was aware about sale deed in 2010, in that case also there was an inordinate delay of 12 years in filing the complaint.

7. The complaint case No. 10/2022 under Sections 420/468/471 IPC pending before the learned Chief Judicial Magistrate, Aalo, is at the stage of appearance and under the said circumstance enunciated, the petitioner is filing the present application under Section 482 of the Cr.P.C praying for quashing of the complaint Case No. 10/2022 under Sections 419/420/468/471 IPC.

8. The learned counsel for the petitioner relied on the decision of the Hon'ble Apex Court reported in (**2021**) **0 AIR (SC) 899 Rattan Singh & Ors. Vs. Nirmal Gill & Ors**, wherein it has held that;

"(A)Agreement to Sell – Fraudulent Transaction – Alleged fraud committed in respect to 1990 GPA and Sale deeds – Disputed documents are registered – A document is presumed to be genuine if same is registered – Initial onus was on plaintiff who had challenged stated registered document – As execution of 1990 GPA and sale deeds in present cases is denied by plaintiff, it became necessary for plaintiff to examine attesting witnesses of disputed documents to establish her allegation about its non-execution – Stated documents were prepared on the basis of instructions of plaintiff and had been duly executed by her in presence of attesting witnesses – Plaintiff and defendants always had cordial relationship and plaintiff was on visiting terms – Plaintiff had failed to prove fact of misuse of trust by defendants as such – Handwriting expert had determined disputed signatures to have been signed by plaintiff herself – Expert opinions are not a binding piece of evidence and have to be corroborated with other pieces of evidence – Plaintiff failed to prove that her signatures on subject documents are forged – Since 1963 GPA is a document which is more than 30 years old, presumption in favour of a 30 years old

document is a rebuttable presumption –Trial Court was right in holding 1963 GPA, to be a genuine document –Standard of proof required in a civil dispute is preponderance of probabilities and not beyond reasonable doubt – Impugned judgment and decree passed by High Court set aside – Judgment and decree passed by first appellate Court restored.”

9. The learned counsel for the petitioner further relied on another decision of the Hon’ble Apex Court reported in **(2023) 0 Supreme(SC) 541, Chanchalpati Das Vs. State of West Bengal** where in para-16, it has held as under;

“16. As regards inordinate delay in filing the complaint it has been recently observed by this Court in [Hasmukhlal D. Vora & Anr. vs. State of Tamil Nadu](#)¹³ that though inordinate delay in itself may not be a ground for quashing of a criminal complaint, however unexplained inordinate delay must be taken into consideration as a very crucial factor and ground for quashing a criminal complaint.”

10. Relying on the above referred judgment, the learned counsel for the petitioner further submitted that herein the instant case from the facts as well as from the order passed by the learned Deputy Commissioner, Aalo, it is very much evident that the respondent had every knowledge about the execution of the sale deed and even for the sake of argument, if it is admitted that it came to the knowledge of the respondent only in 2010 in that case also it is seen that after the lapse of 12 year, he came up with a petition alleging that fraud has been committed by the petitioner, and forged and fabricated sale deed was

prepared by him showing execution of sale deed by the respondent complainant. The delay in filing the said criminal case also could not be well explained by the respondent and accordingly, it is submitted that as per the observation made by the Hon'ble Apex Court, though the inordinate delay cannot be the ground for quashing the proceeding but unexplained inordinate delay should be taken into consideration as a crucial factor and may be a ground for quashing of a criminal proceeding.

11. Further, the learned counsel for the petitioner submitted that from the entire facts and circumstances of this case, it is seen that in spite of the execution of sale deed in favour of the present petitioner in the year 1994, the false and concocted case is lodged by the respondent only with a malafide intention claiming that he came to know about the execution of forged and fabricated sale deed in the year 2010. Thus, it is seen that the respondent did not approach the Court with a clear hand and it is a settled law that one must come to the Court with a clean hands in. In that regard, he has relied on the decision of Hon'ble Apex Court reported in **(1994) 0 AIR(SC) 853 s.p. Chengalvaraya Naidu (dead) L.Rs. Vs. Jagannath (dead) by L.Rs. and Others.**

12. Accordingly, it is submitted by the learned counsel for the petitioner that entire dispute between the parties is purely civil in nature and there is no need of criminal proceeding as the title of land in question is already disputed and adjudicated by the civil suit bearing T.S No. 12/2022, which is still pending before the learned Civil Judge, Sr. Division, Aalo for declaration of the sale deed dated 20.07.1994 as null and void. Accordingly, it is submitted that it

is a fit case where the inherent power under Section 482 Cr.P.C can be invoked to quash the compliant case No. 10/2022 pending before the learned Chief Judicial Magistrate, Aalo, West Siang District, Arunachal Pradesh and the order dated 27.09.2022 passed by the learned Chief Judicial Magistrate, Aalo, West Siang District, Arunachal Pradesh taking cognizance under Sections 420/468/471 of the IPC against the petitioner.

13. In this context, the learned counsel for respondent No.2 submitted that it is claimed by the petitioner that land in question was sold in his favour in the year 1994 is a forged and fabricated document and even through the bare eye also it can be seen that signature made by the complainant/respondent in the complaint as well as in affidavit are same but the signature which is alleged to have been put by the complainant in sale deed is different. In this context, the learned counsel for the respondent No.1 submitted that the complainant had intentionally put different signature in the complaint as well as in affidavit but it can be seen that the signature which is put by the complainant/respondent in affidavit-in-opposition is same with the signature put by the respondent in the sale deed which can be seen even through a bare eye.

14. The learned counsel for the respondent No.2 further submitted that it is not necessary to examine all the witnesses under Section 202 Cr.P.C, if the Magistrate is satisfied only with the statement of the complainant, in this regard he has relied on a decision of the Hon'ble Apex Court reported in **(2010) 3 SCC (Cri) 452, Shivjee Singh Vs. Nagendra Tiwary**. The learned counsel further submitted that the facts of the case may be civil in nature but it may also involved a criminal offence and in that regard, there cannot be any bar to

proceed with the criminal proceeding. In this context he has relied on the decision of the Hon'ble Apex Court reported in **(2006) 6 SCC 736, Indian Oil Corpn. Vs. NEPC India Ltd.,** where in para-12 (V) of the Judgement, it reads as under;

"12. (v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

15. The learned counsel for the respondent No.2 further submitted that the Hon'ble Apex Court in Bhajan Lal's case reported in **(1992) Supp (1) SCC 335,** where in para-102 the Hon'ble Apex Court has provided some guidelines and in para-103 of the said judgment , it reads as under;

"103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very 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."

16. Accordingly, the learned counsel for the respondent No.2 submits that there are sufficient materials with the complaint case on the basis of which the learned Court below took cognizance after the satisfaction from statement made in the complaint as well as after recording the statement of the present respondent No.2 under Section 202 of the Cr.P.C. and submitted that it is not at all a fit case, where criminal proceeding as well as the order of taking cognizance can be set aside and quashed by invoking the power under Section 482 of the Cr.P.C.

17. Mr. J. Tsering, the learned Public Prosecutor has submitted in this regard that the sale deed is also found to be admitted in the Keba decision and reminder was also issued by the Deputy Commissioner regarding the sale executed by the complainant/respondent in 1994. Accordingly, the learned Public Prosecutor submitted that apparently it reveals that dispute is purely civil in nature though the complaint has been filed by the respondent No.2.

18. Hence, considering the entire submissions made by the learned counsel for both the sides, I have perused the case record as well as the annexure and counter-affidavit filed along with the petition. It is a fact that the dispute

between the parties is for a plot of land which is claimed to have been executed in favour of the petitioner in year 1994 by the respondent. On the other hand, it is the claimed of the respondent No.2 that the petitioner tried to grab the land on the strength of forged and fabricated sale deed shown to have been executed by the respondent in favour of the petitioner by forging the signature. Further, it is alleged that the signature which is available in the sale deed is not the signature of the respondent No.2 and he never executed any sale deed. But, the signature on the affidavit-in-opposition filed by the respondent No.2 is quite similar with the signature which is alleged to have been put by the respondent No.2 in the sale deed executed in the year 1994.

19. It is also a fact that inordinate delay cannot be a ground for quashing of a criminal proceeding but here in the instant, it is seen that there is 12 years of delay in filing the criminal proceeding and even if for the sake of argument, it is accepted that he was aware about the execution of sale deed only in the year 2010 after receiving a notice from the Deputy Commissioner. It is further seen that in the year 2013 also the sale deed was admitted in the Keba decision. At the same time, it also cannot be denied that one civil proceeding is still pending in the Court of the learned Civil Judge, Sr. Division, Aalo for declaration of sale deed dated 20.07.1994, as null and void.

20. So, considering the entire circumstances of this case, it is seen that basically, the present case is between the parties for a plot of land wherein, one sale deed is shown to be executed in favour of the petitioner by the respondent in the year 1994. Thus, *prima facie* it is seen that entire case is of Civil in nature and for that one civil proceeding is still pending before the learned Civil Judge,

Sr. Division, Aalo. The Hon'ble Apex Court in the case of ***State of Madhya Pradesh Vs. Laxmi Narayan*** and others, reported in ***(2019) 5 SCC 688***, ***where in para-15.1, it has held as under;***

"15.1. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under: i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;"

21. After hearing the submission made by the learned counsel for both the sides and also considering the entire aspect of the case, it is seen that it is purely a civil dispute between the parties where criminal colour has been given and hence, in view of the judgement passed by the Hon'ble Apex Court, I find that it is a fit case wherein, inherent power of Section 482 Cr.P.C can be invoked for quashing the compliant case No. 10/2022 under Sections 419/420/468/471 of the Indian Penal Code pending before the learned Chief Judicial Magistrate, Aalo, West Siang District, Arunachal Pradesh and the order dated 27.09.2022 passed by the learned Chief Judicial Magistrate, Aalo, West Siang District, Arunachal Pradesh taking cognizance under Sections 420/468/471 of the IPC against the petitioner.

22. Accordingly, the compliant case No. 10/2022 under Sections 419/420/468/471 of the Indian Penal Code pending before the learned Chief Judicial Magistrate, Aalo, West Siang District, Arunachal Pradesh and the order dated 27.09.2022 passed by the learned Chief Judicial Magistrate, Aalo, West Siang District, Arunachal Pradesh taking cognizance under Sections 420/468/471 of the IPC against the petitioner is set aside and quashed.

The instant criminal petition stands disposed of.

JUDGE

Comparing Assistant