

GAHC010093102023



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

Case No. : Crl.Pet./399/2023

SANJAY KUMAR MOZIKA AND ANR.
S/O KAMAKHYA PRASAD MOZIKA HAVING ADDRESS 4TH FLOOR ROYAL
PLAZA G S ROAD CHRISTIANBASTI GUWAHATI 5 ASSAM

2: HARI KUMAR SHARMA
S/O OM PRAKASH SHARMA HAVING ADDRESS 4TH FLOOR ROYAL PLAZA
G S ROAD CHRISTIANBASTI GUWAHATI 5 ASSA

VERSUS

THE STATE OF ASSAM AND ANR.
THROUGH THE PP, ASSAM GUWAHATI

2: ANJU DEORAH
W/O PANKAJ DEORAH R/O G S ROAD MARBLE COMPLEX GUWAHATI

Advocate for the Petitioner : MR. D DAS SR. ADV

Advocate for the Respondent : PP, ASSAM

Linked Case : Crl.Pet./401/2023

PRADEEP HARLALKA AND 2 ORS
S/O BASUDEO HARLALKA R/O SWEDA TOWERS FLAT NO. 102 BILPAR
CHATRIBARI GUWAHATI 8

2: KOBITA PHUKAN
W/O MUKESH MORE HAVING ADDRESS ST 4TH FLOOR ROYA PLAZA G S
ROAD CHRISTIANBASTI GUWAHATI 5 ASSAM

3: ANJANA HARLALKA
S/O PRADEEP HARLALKA R/O AT SWEDA TOWERS FLAT NO. 102 BILPAR
CHATRIBARI GUWAHATI 8
VERSUS

THE STATE OF ASSAM AND ANR.
THROUGH THE PP
ASSAM

2: ANJU DEORAH
W/O SHRI PANKAJ DEORAH R/O G.S. ROAD MARBLE COMPLEX GUWAHATI
5

Advocate for : MR. D DAS SR. ADV
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

Linked Case : CrI.Pet./400/2023

SANTOSH BANKA AND 2 ORS.
S/O SHRI SHYAM SUNDER BANKA R/O RD FLOOR N H CENTER POINT
BORA SERVICE G S ROAD GUWAHATI 7

2: VIKASH SANCHETI
S/O UMED SINGH SANCHETI R/O AT IMPERIAL GREEN FLAT NO. 03 (A) 3RD
FLOOR NILONMONI PHUKNA ROAD HOUSE NO. 29 (A) CHRISTIAN BASTI
GUWAHATI 5

3: NISHA VASANDANI
W/O PREM VASADANI R/O FLAT N O. 4502 NEHA APARTMENT S J ROAD
ATHGAON GUWAHATI 1
VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PP
ASSAM

2: ANJU DEORAH
W/O PANKAJ DEORAH R/O G S ROAD MARBLE COMPLEX GUWAHATI 5

Advocate for : MR. D DAS SR. ADV
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIV JYOTISAIKIA

For the Petitioners : Mr. D. Das,
Sr. Advocate.

For the Respondents : Mr. A.M. Bora,
Sr. Advocate.

Mr. D. Das,
Addl. P.P., Assam.

Date of Hearing : 24.05.2023.

Date of Judgment : 30.05.2023.

JUDGMENT AND ORDER (CAV)

The three petitions under Section 482 of the CrPC praying for quashing the FIR in respect of Dispur P.S. Case No.2097/2022 dated 13.09.2022 registered under Sections 120(B)/406/420/468 and 471 of the Indian Penal Code are taken up together for final disposal as they have arisen out of the same FIR.

2. Heard Mr. D. Das, learned senior counsel appearing for the petitioners. Also heard Mr. A.M. Bora, the learned senior counsel representing respondent no.2. Mr. D. Das, learned Addl. Public Prosecutor appears on behalf of the State of Assam (respondent no.1).

3. Late Prabhu Dayal Deorah was the land owner and he had a

Development Agreement with the petitioner Shri Sanjay Kr. Mozika, who represents a company named M/S. Brahmaputra Infrastructure Limited. It was agreed between them that the developer would have 52.40% share over the property and the land owner would have 47.60% of the property. Accordingly, the property was constructed and everything was running smoothly.

4. In the meantime, Probhu Dayal Deorah expired and his daughter Anju Deorah (the respondent no.2 herein) steeped into his shoes.

5. On 18.04.2019, 4(four) agreements namely, agreement for maintenance; agreement of tenancy management; agreement for advertisement and kiosk management and agreement for food court management were executed.

6. Now, Anju Deorah has claimed that from 14.04.2019 to 19.04.2019, she was at Hong Kong. Anju Deorah has alleged that the petitioners have fraudulently executed the aforesaid four agreements on 18.04.2019. She has further claimed that she never executed those agreements by putting her thumb impression and signature. Alleging the aforesaid facts, Anju Deorah had lodged the FIR before police.

7. It may be mentioned that both sides are already involved in a dispute which is being looked after by an arbitrator.

8. The learned counsel Mr. Das submitted that it is a civil dispute and since an arbitration proceeding is going on between the parties, this matter can be disposed of by the arbitrator.

9. In order to buttress his point, Mr. D. Das, learned senior counsel has

relied upon *Usha Chakraborty and Anr. v. State of West Bengal*, reported in 2023 SCC Online SC 90. Para 17 reads as under –

“17. In the aforesaid circumstances, coupled with the fact that in respect of the issue involved, which is of civil nature, the respondent had already approached the jurisdictional civil court by instituting a civil suit and it is pending, there can be no doubt with respect to the fact that the attempt on the part of the respondent is to use the criminal proceedings as weapon of harassment against the appellants. The indisputable facts that the respondent has filed the pending title suit in the year 2015, he got no case that he obtained an interim relief against his removal from the office of Secretary of the School Managing Committee as also the trusteeship, that he filed the stated application for an order for investigation only in April, 2017 together with absence of a case that despite such removal he got a right to get informed of the affairs of the school and also the trust, would only support the said conclusion. For all these reasons, we are of the considered view that this case invites invocation of the power under [Section 482](#) Cr.P.C. to quash the FIR registered based on the direction of the Magistrate Court in the afore-stated application and all further proceeding in pursuance thereof. Also, we have no hesitation to hold that permitting continuance of the criminal proceedings against the appellants in the aforesaid circumstances would result in abuse of the process of Court and also in miscarriage of justice.”

10. Mr. A.M. Bora, the learned senior counsel, on the other hand, has relied upon the decision rendered in *Trisuns Chemical Industry v. Rajesh Agarwal*, (1999) 8 SCC 686, wherein it is held as under –

“9. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence.

Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] .”

11. Mr. Bora further relied upon *Ramveer Upadhyay vs. the State Of Uttar Pradesh* reported in 2022 SCC Online SC 484. Para 19 reads as under –

“19. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under [Section 482](#) of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under [Section 482](#) of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Attrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under [Section 482](#) of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No.19/2018 is not such a case which should be quashed at the inception itself without further Trial. The High Court rightly dismissed the application under [Section 482](#) of the Cr.P.C.”

12. I have considered the submissions made by the learned counsels of both sides.

13. The power under Section 482 of the CrPC is the inherent power of the High Court for preventing the abuse of the process of the court. The guidelines for exercising the power under Section 482 of the CrPC has been laid down by the Supreme Court in *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335: AIR 1992 SC 604. It is held in the said judgment as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases 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 guidelines or rigid formulae and to give an exhaustive list of 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 FIR 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."

14. Reverting the case in hand, it is a fact that between the period of 14th April, 2019 and 19th April, 2019, Anju Deorah was at Hong Kong and the disputed agreements were executed on 18th April, 2019. She has claimed that in her absence somebody forged her signatures while executing those documents. Therefore, there is a *prima facie* case under the aforesaid sections of Indian Penal Code.

15. I find that a thorough police investigation is necessary in this case. I

am of the opinion that this is not a fit case for exercising the power under Section 482 of the CrPC. Therefore, the three petitions under Section 482 of the CrPC are found to be devoid to be devoid of merit and stands dismissed accordingly.

JUDGE

Comparing Assistant