

GAHC010307972019



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

Case No. : Crl.Pet./1473/2019

RAMA KANTA DHAR AND 2 ORS.
S/O LT. RABINDRA KUMAR DHAR, R/O VILL-CHAPARMUKH, P.O.-
CHAPARMUKH, DIST-NAGAON, ASSAM

2: SANKAR DHAR
S/O LT. RABINDRA KUMAR DHAR
R/O VILL-CHAPARMUKH
P.O.-CHAPARMUKH
DIST-NAGAON
ASSAM

3: SUMAN DHAR
S/O LT. RABINDRA KUMAR DHAR
R/O VILL-CHAPARMUKH
P.O.-CHAPARMUKH
DIST-NAGAON
ASSA

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:SANKAR DUTTA
S/O LT. SUBODH CHANDRA DUTTA
R/O HAIBARGAON
B.B. ROAD
SAMDARPATY
P.S.-NAGAON
DIST-NAGAON
ASSAM
PIN-78200

Advocate for the Petitioner : MR G N SAHEWALLA

Advocate for the Respondent : MR. K K PARASAR(ADDL.PP, ASSAM)

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 26-07-2023

Heard Mr. Pran Bora, learned counsel for the petitioners and Mr. KK Parasar, learned Addl. Public Prosecutor for the State respondent No. 1.

2. The petitioners have filed an application under Section 482 Cr.P.C. for quashing of charge sheet bearing No. 12/2019, dated 28.02.2019 in connection with Raha P.S. Case No. 103/2018 under Sections 420/468/471/120B/34 IPC and order dated 15.05.2019, passed by the learned Chief Judicial Magistrate, Nagaon and order dated 16.05.2019, passed by the learned Sub-Divisional Judicial Magistrate, Nagaon in P.R.C. No. 533/2019 (Corresponding to G.R. Case No. 3183/2018) taking cognizance of the instant case and issuing summons to the petitioners under the aforesaid Sections of law.

3. The brief facts of the case is that the father of the petitioners late Rabindra Kumar Dhar purchased a plot of land measuring 15 Lechas situated at Patta No. 7, Dag No. 15 under Raha Police Station at Village- Chaparmukh Town in the District of Nagaon, Assam from the father of the respondent No. 2, late Subodh Chandra Dutta vide registered Deed of Sale bearing No. 2766, dated 18.05.1995.

4. After purchasing the said plot of land, the father of the petitioners did

not apply for mutation of the said plot of land in his name. However, the petitioners alongwith their father were residing therein by constructing their own house. Subsequent thereto, on 25.07.2005, the father of the petitioners passed away. After the death of father of the petitioners, when the petitioners came to know that the aforesaid plot of land has not been mutated, they applied for mutation of their names in the Jamabandi. However, out of the bona fide mistake, the petitioners while submitting their application mistakenly signed the name of their late father. Upon realizing their mistake, the petitioners filed an application dated 05.04.2018 addressed to the Circle Officer, Raha praying therein for withdrawal of their earlier application for mutation.

5. Thereafter, the Circle Officer, Raha issued notices under Section 52 of the Land and Revenue Regulation to the family members of the respondent No. 2. However, instead of writing the area of land as 15 Lechas, the area of the land was written as 1 Katha 10 Lechas by the officials of the Circle Office, Raha. However, the petitioners did not have any knowledge. Thereafter, the respondent No. 2 appeared before the Circle Officer, Raha informing that his father i.e. late Subodh Chandra Dutta had expired. Furthermore, in the said order, dated 08.09.2018, it was categorically observed by the Circle Officer, Raha which is reproduced herein below:-

“.....The 2nd Party is told that due to system error the Office Mutation Case got registered thrice and hence though the applicant applied for 15 Lechas, the notice was generated for 1 Katha 10 Lechas. This is regretted.”

6. It is also stated in the petition that a perusal of the aforesaid order

clearly brings forth that the fact of mention of the area of 1 Katha 10 Lechas in the notice was not due to the fault on the part of the petitioners but it was a mistake on the part of the officials of the Circle Office, Raha as such no illegality or irregularity has been committed by the petitioners. Subsequently, the respondent No. 2 lodged an ejahar before the Officer-in-Charge of Raha Police Station alleging that the petitioners in connivance with the officials of the Circle Office, Raha applied for mutation of a plot of land measuring 1 Katha 10 Lechas of land instead of 15 Lechas of land. On the basis of the aforesaid ejahar, a case was registered by the Raha Police Station being Raha P.S. Case No. 103/2018. After completion of the investigation, charge sheet was submitted bearing No. 12/2019, dated 28.02.2019 in connection with Raha P.S. Case No. 103/2018 under Sections 420/468/471/120B/34 IPC.

7. It is submitted by the learned counsel for the petitioners that while taking cognizance of the instant case, the learned court below failed to consider the fact that the petitioners being the brothers, the ingredients of Section 120B IPC as well as Section 34 IPC are nowhere attracted in the instant case. Furthermore, the ingredients of Sections 468/ 471 IPC are also not attracted in the present case and the petitioners filed application dated 05.04.2018 addressed to the Circle Officer, Raha stating that the earlier application for mutation was wrongly filed and prayed for withdrawal of the said application, but the learned court below failed to consider the matter and took cognizance against the petitioners on the basis of the FIR lodged by the respondent No. 2.

8. It is further submitted by the learned counsel for the petitioners that the aforesaid sections of law are not attracted in the present case and as such

the quashing has been sought for.

9. In support of his submissions, the following case laws have been relied on by the learned counsel for the petitioners:-

(I) (2009) 3 SCC 78 (*V.Y. Jose and Another Vs. State of Gujarat and Another*).

(II) 2012 (4) GLT 546 (*Sumsung India Electronics Pvt. Ltd. & Anr. Vs. State of Assam & Ors.*)

(III) (2017) 15 SCC 560 (*State through Central Bureau of Investigation Vs. Dr. Anup Kumar Srivastava*).

10. In response, the learned Addl. PP has submitted that the accused/petitioners by forging the signature of their late father filed an application for mutation of a plot of land and the petitioners in connivance with the officials of the Raha Circle Office issued notice to the family members of the respondent No. 2 for mutation of an area of land of 1 Katha 10 Lechas instead of 15 Lechas, which was purchased by the father of the petitioners. It is further submitted by the learned Addl. PP that prima facie there is a case made out against the petitioners. Under such backdrop, this is not a fit case to quash the proceeding by this Court by applying the inherent powers under Sections 482 Cr.P.C.

11. I have considered the submissions of the learned counsel for the parties.

12. The law in regard to quash the charge sheet has been crystal clear in the case of *Haryana and Others Vs. Bhajan Lal and Others*, reported in 1992 *Supplementary (1) SCC 335* wherein the grounds has been mentioned in paragraph 102, on existence of which, a charge sheet can be quashed.

13. In the case of *International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and others Vs. Nirma Cerglass Technic Private Limited and another*, reported in (2016) 1 SCC 348, the Hon'ble Supreme Court in regard to quash the charge sheet held that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is, as to whether uncontroverted allegations as made in the complaint established the offence. The High Court being superior Court of the State, should refrain from analysing the materials which are yet to be adduced and seen in their true perspective. The inherent jurisdiction of the High Court under Section 482 Cr.P.C., should not be exercised to stifle a legitimate prosecution. The power under Section 482 Cr.P.C. to be used sparingly only in rare cases. It is further held by exercising inherent jurisdiction under Section 482 Cr.P.C., it is not for the High Court to appreciate the evidence and its truthfulness or sufficiency inasmuch as it is the function of the trial Court. Therefore, the court below has not committed any error or illegality in taking cognizance in the matter and therefore, culpability or otherwise will be judged as per evidence recorded before the Court of law.

14. The learned counsel for the petitioners also submitted that on perusal of the orders dated 15.05.2019 and 16.05.2019, taking of cognizance against

the petitioners and summoning of the petitioners as accused is without any materials on record. He further contended that the Magistrate concerned on the face of it acted upon mechanically and without application of judicial mind. The impugned orders do not indicate application of the judicial mind. Under such circumstances, the impugned orders are liable to be set aside and quashed.

15. On the other hand, learned Addl. Public Prosecutor has opposed the submission of the learned counsel for the petitioners and submitted that after completion of the investigation, the Investigating Officer has submitted charge sheet against the petitioners and summoning order has been issued by the concerned Magistrate after considering the materials on record. In the summoning order, however it has been stated that offence have been committed and therefore the cognizance has been taken. Therefore, the present application is liable to be dismissed.

16. The expression 'cognizance' has not been defined in the Code. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It indicates the point when a Court or a Magistrate takes judicial notice of an offence with a view to initiate proceedings in respect of such offence said to have been committed by someone. Taking cognizance does not involve in any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceeding. Taking of cognizance is a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender.

17. A summons is a process issued by a Court calling upon a person to appear before a Magistrate. It is used for the purposed of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in Court.

18. In the case of *Kanti Bhadra Shah and another Vs. State of West Bengal (2000) 1 SCC 722*, the Hon'ble Supreme Court held as under:-

“ If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial Courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order had been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stage in the trial. It is a salutary guidelines that when orders rejecting or granting bail are passed, the Court should avoid expressing one way or other on contentions raised, except in cases

such as those failing within Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985.”

19. In the case of *Nupur Talwar Vs. C.B.I*, reported in 2013 AIR SCW 369, the Hon’ble Supreme Court has held as under:-

“9. A summons is a process issued by a Court calling upon a person to appear before a Magistrate. It is used for the purposed of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in Court. A person who is summoned is legally bound to appear before the Court on the given date and time. Willful disobedience is liable to be punished under Section 174 Indian Penal Code. It is a ground for contempt of Court.

10. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This Section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the Section that the explicit narration of the same is mandatory, meaning thereby that it is not a pre-requisite for deciding the validity of the summons issued.

11. Time and again it has been stated by this Court that the summoning order under Section 204 of the Code requires no explicit reasons to be stated

because it is imperative that the Magistrate must have taken notice of the accusations and applied his mind to the allegations made in the police report and the materials filed therewith."

20. On a bare look at the aforesaid legal proposition, it is, therefore, apparent, that an order issuing process, cannot be vitiated merely because of absence of reasons.

21. Section 482 Cr.P.C. deals with inherent powers of the High Court, which reads as follows:

"Nothing in this Code shall be deemed to limit or effect the inherent power of the High Court to make such order as may be necessary to give effect to any order under this Court, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

22. Section 482 of the Cr.P.C. starts with the words "nothing in this Code". Thus, the inherent jurisdiction of the High Court under Section 482 of the Cr. P.C. can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. The inherent power is to be used only in the cases where there is an abuse of the process of the Court or where inference is absolutely necessary for securing the ends of justice. The most common cases where inherent jurisdiction is generally exercised is fair criminal proceedings are required to be quashed because they are initiated illegally, vexatious or without jurisdiction.

23. In the case of *R.P. Kapoor Vs. State of Punjab AIR 1960 SC 866*, the

Hon'ble Supreme Court summarized some of the categories of cases where inherent power should be exercised to quash the criminal proceeding against the accused stating:

“(i) Where it manifestly appears that there is a legal bar against the institution or continuance that is want of sanction.

(ii) Where the allegations in the first information report or complaint taken at its effects value and accepted in their entirety do not constitute the offence alleged.

(iii) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly failed to prove the charge. Gajendragadkar, J., who spoke for the Court in Kapur's case, observes in his judgment that it was not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of the High Court's inherent jurisdiction. The three instances cited in the judgment as to when the High Court would be justified in exercising its inherent jurisdiction are only illustrative and can in the very nature of things not be regarded as exhaustive. Considerations justifying the exercise of inherent powers for securing the ends of justice vary from case to case and a jurisdiction as wholesome as the one conferred by Section 482 Cr.P.C. ought not to be encased within the strait-jacket of a rigid formula.”

24. In view of the aforesaid legal proposition, this Court is of the opinion that the submissions made by the learned counsel for the petitioners calls for adjudication on pure questions of fact which may be adequately adjudicated upon only by the trial court and while doing so even the submissions made on

point of law can also be more appropriately gone into by the trial court in this case. This Court does not deem it proper, and therefore, cannot be persuaded to have a pre-trial before the actual trial begins. On perusal of the FIR and the materials collected by the Investigating Officer on the basis of which the charge sheet has been submitted, makes out a prima facie case against the petitioners at this stage and there appears to be sufficient ground for proceeding against the accused/ petitioners. I do not find any justification to quash the charge sheet or the proceedings pending against the petitioners before the trial court.

25. In the result, the criminal petition is dismissed. Stay, if any, be vacated accordingly. Learned trial court will proceed with the case as per provisions of law.

JUDGE

Comparing Assistant