

GAHC010010242015



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

Case No. : Crl.Pet./197/2015

NAGENDRA NATH LAHKAR
S/O LT. HARKANTA LAHKAR R/O FATASIL AMBARI NEAR MAYUR
KRISHNA CINEMA HALL, GUWAHATI-25, DIST. KAMRUP M, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR

2:SRI AKHIL TALUKDAR
H/O SMTI. BIJULI KALITA S/O LT. TULIA TALUKDAR R/O A K DEB ROAD
FATASIL AMBARI KALI MANDIR
GUWAHATI-25
MOBILE NO. 9864046753

Advocate for the Petitioner : MS.K SAIKIA, MSK KALITA,MS.B BORAH,MRS.A
BORAH,MR.R C SAIKIA

Advocate for the Respondent : MR.P K DASR-2, MR.R ALI(R-2),MR.A CHOUDHURY(R-2),PP,
ASSAM,MRN J DAS(R-2)

BEFORE
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

27-11-2024

- 1.** Heard Mr. R.C.Saikia, learned counsel for the petitioner and Mr. A.K.Das, learned Additional Public Prosecutor (APP), Assam for the respondent No. 1. Also heard Mr. D. Bora, learned counsel for the private respondent No. 2.
- 2.** The present petition has been filed under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973, seeking quashment of Fatasil Ambari P.S.Case No. 89/2015 registered under Sections 406/420/506 IPC.
- 3.** Initially the respondent No. 2, Akhil Talukdar, filed an application under Section 156(3) of the CrPC with a prayer for direction to the Officer-in-Charge of Fatasil Ambari Police Station to register a case in appropriate section of law. Such complaint was registered as Complaint Case No. 275^c/2015.
- 4.** A bare reading of the aforesaid complaint discloses that the wife of the complainant, namely, Bijuli Kalita had entered into an agreement with the present petitioner for purchasing of a plot of land, measuring 1 Katha 10 Lechas covered by Dag No. 419 (old/3641(new) under Patta No. 482, situated at Village-Fatasil EB under Beltola Mouza and accordingly, a registered agreement bearing Registered Deed No. 10980/2014 dated 14.10.2014 was entered and the complainant paid a total amount of Rs. 8,50,000/- or Rs. 9,30,000/- as advance and accordingly, possession was handed over to the wife of the complainant.
- 5.** However, on 05.01.2015, the complainant went to the house of the accused persons to discuss about the matter, the accused persons expressed his ill motive that he will sell the said plot of land to another 3rd party and if complainant makes any obstacle, the accused persons will kill the complainant.

6. As per the statement made in the complaint, on 08.01.2015, the accused person sent a legal notice through his Advocate alleging that seeking permission for sale of the plot of land is duty of the complainant which has not been done by him.

7. It is contented that in the agreement, it was agreed that the accused person had applied for necessary permission.

8. In view of the aforesaid, it is apprehended that the accused person dishonestly wanted to sale said plot of land to another 3rd party and also fraudulently deceived the complainant for his right. It was alleged that the accused person intended to grab whole money from the complainant and intended to sale the said plot of land to another party.

9. On the basis of the said complaint, the learned Chief Judicial Magistrate, Kamrup (M), Guwahati under its order dated 11.02.2015 passed the impugned order forwarding the aforesaid complaint to Fatasil Ambari Police Station for registration of a case under appropriate Section of law and also to submit a report in due course after proper investigation.

10. The learned counsel for the petitioner referring to the materials available on record including the Suit for specific performance of the contract and injunction filed by the complainant before the competent forum as urged that the dispute is Civil in nature and unnecessary criminal colour has been given to it. It is further contention of the petitioner is that there is no material available on record to forward the aforesaid complaint to Fatasil Ambari Police Station for registration a case inasmuch as there is no statement whatsoever that the police has refused to register a case even after taking cognizable offence as discussed.

11. Mr. Bora, learned counsel for the respondent No. 2, submits that he has nothing to submit and that he will abide by this Court.

12. In view of the arguments advanced by the learned counsel for the petitioner, this Court has perused the materials available on record which are not disputed by the respondent No. 2.

13. From the record, it is seen that the registered deed of agreement for sale of the said plot of land was executed between the accused/petitioner and the complainant/opposite party for sale of plot of land, measuring 1 Katha 10 Lechas covered by Dag No. 419 (old/3641(new) under Patta No. 482, situated at Village-Fatasil EB under Beltola Mouza.

14. It is also on record that the accused/petitioner had issued a legal notice through his Advocate alleging that the complainant had violated the terms and conditions of the agreement for sale of said plot of land by not applying permission inspite of several request made by him. In the aforesaid backdrop, it was requested through pleaders' notice to the complainant to take back the advance amount of Rs. 8,50,000/- that has been already paid to him within a period of seven days from the date of receipt of the aforesaid notice.

15. In the meantime, admittedly, a Civil Suit was filed by the wife of the respondent No. 2, which was registered as Title Suit No. 26/2015 for specific performance of the contract and the said agreement for sale of plot of land is recorded herein above. In the suit, a decree of specific performance of contract was sought for directing the defendant therein/accused or petitioner herein to accept the remaining money and to execute a sale deed.

16. At this stage, it is submitted by the learned counsel for the petitioner that the said Suit was decreed ex-parte in favour of the complainant and against the present petitioner which is now pending for consideration in an appeal.

17. In view of the admitted position, this Court is of the unhesitant view that the allegation made is nothing but civil in nature and already civil remedy has been availed by the complainant. From the facts recorded hereinabove, no criminality can be attributed in the case in hand and no ingredient whatsoever has been made out either under Sections 406/420 IPC or 506 IPC from the FIR and if it is accepted in its totality, it is a dispute as regards non-performance by the accused of a contract entered between the informant and the accused.

18. Accordingly, this criminal petition is allowed by setting aside and quashing the Fatasil Ambari P.S.Case No. 89/2015 registered under Sections 406/420/506 IPC and all consequential action arose out of such case.

JUDGE

Comparing Assistant