

GAHC010087102018



2024:GAU-AS:12244

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

Case No. : Crl.Pet./397/2018

AMITABH HAZARIKA
S/O SRI TULEN HAZARIKA, R/O QUARTER NO. CK-7, NRL TOWNSHIP,
NUMALIGARH, DIST. GOLAGHAT

VERSUS

MAINUL HOQUE
S/O LATE SAIDUR RAHMAN, VILLAGE SURJYAKHATA PART-II, PO AND PS
BILASIPARA, DIST. DHUBRI, ASSAM, PIN-783348

Advocate for the Petitioner : MR. N DEKA, MR D K BHATTACHARYYA, MR. M GOGOI

Advocate for the Respondent : MR. S C BISWAS, MR R KARIM, MR. P S BISWAS, MS A DAS

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. N. Deka, Advocate.

For the Respondents : Mr. S. C. Biswas, Advocate.

Date of Hearing : 04.12.2024

Date of Judgement : 04.12.2024

JUDGMENT & ORDER (ORAL)

1. Heard Mr. N. Deka, learned counsel for the petitioner. Also heard Mr. S. C. Biswas, learned counsel for the respondent.
2. The present application is filed under Section 482 Cr.P.C. for quashing of proceeding in C.R. Case No. 904/2017 under Section 420/465/468/471/406/403/109/506/34 of IPC instituted by the respondent against the petitioner pending for trial before the learned Court of Munsiff cum Judicial Magistrate First Class, Bilasipara. The further challenge is an order dated 16.03.2018 passed by the learned Court of Munsiff cum Judicial Magistrate First Class, Bilasipara, whereby summons were issued upon the petitioner under Section 420/465 of IPC.
3. Before dealing in detail the argument of the learned counsel for the parties, let this Court first record the facts which are narrated in the complaint in the following manner:-

It is important to note here that the petitioner is named as accused No. 1 and the learned Magistrate by impugned order issued process only against accused No. 1 along with one Imdadul Hoque.

- I. The mother of the complainant is the sole owner of a plot of land measuring 1 Bigha 3 Kathas 0.43 Lechas covered by Dag No. 234 under Periodic Khiraj Patta No. 45 situated at the Village-Surjakhata Part-II under P.S. & Revenue Circle- Bilasipara, Dist-Dhubri, Assam.
- II. The accused No. 3 by deceitful means on 17.04.2007 had obtained a Registered General Power of Attorney in respect of 2 Bighas 1 Katha 8 Lechas of land out of the complainant mothers land measuring 3 Bighas 1 Katha 8 Lechas covered by Dag No. 234 under

P.P. No. 45 in his favour vide Deed No. 87 dated 17.04.2007.

- III. On the same date, the accused No. 3 made an agreement with the mother of the complainant about division of equal share of monthly rents of the same land vide Deed No. 1471 dated 17.04.2007.
- IV. It is also alleged that on 05.07.2007, a rectification deed was also made in respect of the Deed No. 1471 dated 17.04.2007 and when the mother of the complainant could understand such fact, then she on 11.04.2013 had cancelled the said General Power of Attorney and informed the matter to the accused No. 3.
- V. It is also alleged that in the month of November, 2008, accused No. 3 by deceitful means and by misinfluencing and misguiding the complainant and his mother, obtained a registered Lease Agreement on 06.11.2008 with Numaligarh Refinery Ltd. for installation of a Petrol and Diesel Pump on the said land.
- VI. **The Lease Agreement was also not prepared and made in accordance with the terms and conditions agreed upon by them.** The main terms and conditions which were agreed upon by them before preparation and making the Lease Agreement were different which are enumerated in the paragraph 5 of the complaint.
- VII. It is alleged that on 06.11.2008, the accused No. 3 certified that the accused No. 1 (petitioner herein) is the competent and duly authorized person of the Numaligarh Refinery Ltd., but no proper identification of the accused No. 1 (petitioner herein) was given to the complainant and his mother and keeping them quite dark, **the said**

two accused persons prepared the fictitious, forged and false Lease Agreement between the mother of the complainant and Numaligarh Refinery Ltd and the accused No. 1 (petitioner herein) put his signature for the said Refinery. But, infact the accused No. 1 (petitioner herein) was not the competent and duly authorized person of the said Refinery.

VIII. According to the complainant, said deed was registered on 06.11.2008 before the Sub Registrar, Bilasipara. Neither the complainant nor his mother was aware of the contents of the said Lease Agreement dated 06.11.2008 etc.

IX. It is also alleged that without obtaining any permission from the authority concerned, the Lease Agreement was registered.

X. It is also alleged that subsequent to Lease Agreement dated 06.11.2008, the Numaligarh Refinery Ltd. sublet the said premises/property to the accused No. 2 in the year 2013 and that the accused No. 2 started M/s Glaxy Service Station and since then, running the Petrol/Diesel Pump of the license bearing the name of Bharat Petroleum Ltd.

XI. However, it is also alleged that mother of the complainant had never made agreement or lease with any of the accused person. It is also alleged that M/s Glaxy Service Station deposited the monthly rent in the account of the mother of the complainant @ Rs. 4,300/- in the S.B.I., Bilasipara Branch, but the accused No. 3 took 50% of her monthly rent and deposited the same in the account of the accused

No. 3. It is further alleged that the complainant and his mother believed that the Lease Agreement was made for a period of three years and hence she did not make any enquiry and did not raise any objection about the payment of monthly rent of Rs. 4,300/- before 2015. Even the monthly rents are also not regularly paid to her. And thus, the accused No. 3, misappropriated her said monthly rents and from January/2017, no rent was deposited/paid to her,

4. Mr. Deka, learned Counsel appearing for the petitioner submits that the dispute is essentially civil in nature and a criminal colour has been given to such dispute. According to Mr. Deka, on the face of the FIR and the lease deed, even if accepted to be correct no case under Section 406/420/465 of IPC is made out. It is further contended by Mr. Deka, that mere mention of the Sections and the incorporation of language of Section is not sufficient and the informant is required to bring out the particulars of the offence committed by the accused person and the role played by the alleged accused in committing the offence.
5. Per contra, Mr. S. C. Biswas, learned counsel for the respondent submits that this Court in exercise of power under Section 482 of Cr.P.C. should not enter into the merit of the claim as raised in the FIR and is to consider whether a reading of the FIR makes out a prima facie case when such assertion made in the FIR is taken in its face value.
6. Mr. Biswas, learned counsel for the respondent further argues that a clear case of cheating and criminal breach of trust is made out from reading of the FIR. Therefore, this Court should not exercise its power under Section 482 of Cr.P.C. to quash the criminal proceeding.

7. Mr. Biswas, learned counsel for the respondent further submits that as the facts disclosed make out case under Section 406/420/468 of IPC, the investigating authority should not be deprived of the rights to continue with the investigation inasmuch as FIR is not encyclopaedia of all the facts.
8. Mr. Biswas, learned counsel for the respondent relying on the decision of the Hon'ble Apex Court in the case of **Vijayander Kumar and Others – Vs- State of Rajasthan and Another** reported in **(2014) 3 SCC 389** argues that in the given set of facts though it may look like a civil wrong however, same shall not automatically make the FIR liable for interference in exercise of power under Section 482 of Cr.P.C., more particularly, in the given facts of the present case, when the FIR prima facie discloses an offence under Section 406 of IPC. Therefore, Mr. Biswas, learned counsel for the respondent submits that the present criminal petition should be dismissed and the FIR should be allowed to be investigated.
9. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the material available on record.
10. The power of High Court under Section 482 of Cr.P.C., to quash the criminal proceeding was summarized by the Hon'ble Apex Court in **Indian Oil Corporation –Vs- NEPC India Limited and Others** reported in **2006 (6) SCC 736**. The relevant portion is quoted herein below:-

“(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(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”.

11. The Hon’ble Apex Court in ***Mohammad Wajid & Anr vs. State of UP and Ors*** reported in **2023 INSC 683** relied on by the petitioner, after dealing elaborately with the power of revision so far same relates to the quashing of FIR and charge sheet has laid down the following principles.

- i. It will not be just enough for the court to look into the averments made in the FIR/ complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.
- ii. In frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments made.
- iii. The overall circumstances leading to the initiation/ registration of the case as well as the materials collected in the course of investigation is to be looked into.

12. The Hon'ble Apex Court in the case of **G. Sagar Suri and Anr –Vs- State of UP and Ors** reported in **2000 2 SCC 636** went to say that while dealing with a dispute of civil matter in exercise of power under Section 482 of Cr.P.C. for quashment, it is to be seen that whether the matter is essentially a civil in nature and has been given a cloak of criminal offence inasmuch as criminal proceedings are not a short cut of other remedies available in law. It was held by the Hon'ble Apex Court in the said case that before issuing process, a criminal court has to exercise a great deal of caution for the reason that for the accused, it is a serious matter.
13. Even if the aforesaid complaint and allegations made therein are accepted at its face value, what is discernible is existence and execution of a Lease Agreement dated 06.11.2008, though the same has been stated to be deceitful, Fact is also disclosed from the complaint that, till 2015 admittedly, the mother of the accused used to receive lease rent as per such Lease Agreement and it is also not disputed that a Petrol/Diesel Pump is being run from the lease plot of land and that the Lease Agreement was entered between the Numaligarh Refinery Ltd. and the mother of the complainant, though an allegation is made that accused No. 1 is not the authorized person to do so. There are uncontroverted materials which shows that petitioner accused No. 1 is an official of said NRL. The same time, the fundamental allegation/grievance as disclosed at paragraph 8 of the complaint is that the monthly rent was Rs. 4,300/- only for three years and was supposed to be enhanced and the said rent has not also been regularly paid.
14. If the allegations are taken as a whole, it also discloses that the

fundamental grievance is alleged non enhancement of rent beyond three years and non payment of regular rent. In the aforesaid backdrop, when the mother of the complainant is claiming rent and accepted that she has been receiving rent from 2008 to 2014 and rent has not been enhanced beyond 2014, and complaint was lodged in the year 2017, more particularly, in the admitted backdrop that the Petrol/Diesel Pump was constructed and started/operating much prior to lodging of the complaint, this Court is of the view that the prosecution launched against the accused No. 1, (petitioner herein) who is admittedly an employee of Numaligarh Refinery Ltd. is nothing but an abuse of process.

15. Though there are some allegations against the accused No. 2 and 3 (who are not before this Court) that powers of attorney were obtained by deceitful means etc., no such allegation is made against the present petitioner nor any inducement on the part of present petitioner is disclosed or that any forgery has been committed by present petitioner. No allegation is there that the Lease Agreement entered between between the Numaligarh Refinery Ltd. and the mother of the complainant is a fraudulent deed or that the mother of the complainant never put signature in the said Lease Agreement.
16. This Court cannot be also oblivious of uncontroverted fact that already a suit has been filed by the mother of the complainant seeking cancellation of the Lease Agreement dated 06.11.2008 which was registered as Title Suit No. 34/2016 and the same is pending for adjudication.
17. In the totality of the matter, this Court is of the unhesitant view that the present complaint is nothing but an abuse of the process of Court and if the

same is allowed, it will cause miscarriage of justice and the present petitioner will unnecessarily be compelled to face a prosecution without there being any material against him.

18. In view of the aforesaid, the present criminal petition stands allowed by setting aside and quashed the proceeding in C.R. Case No. 904/2017 under Sections 420/465/468/471/406/403/109/506/34 of IPC instituted by the respondent against the petitioner pending for trial before the learned Court of Munsiff cum Judicial Magistrate First Class, Bilasipara and the order dated 16.03.2018 passed by the learned Court of Munsiff cum Judicial Magistrate First Class, Bilasipara, whereby summons were issued upon the petitioner under Section 420/465 of IPC.
19. Accordingly, this criminal petition is disposed of.

JUDGE

Comparing Assistant