

GAHC010109232018



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

Case No. : Crl.Pet./480/2018

ASHOK VERMA
S/O LATE SITA RAM VERMA, R/O SHRISTHI TOWER, DENISH ROAD,
PANBAZAR, GUWAHATI-01, KAMRUP (M), ASSAM

VERSUS

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

2:GOPAL KRISHNA KHOUND
S/O LATE NAGENDRA NATH KHOUND
R/O BHETAPARA
KANAKLATA SAIKIA PATH
H.NO. 12
GUWAHATI-78103

Advocate for the Petitioner : MR. S CHAMARIA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

05.03.2024

Heard Mr. S. Chamaria, learned counsel for the petitioner. Also heard Mr. G. Pathak, learned counsel for the respondent No.2 and Mr. R.J. Baruah the learned Addl. P.P. Assam.

2. In this petition, under section 482 Cr.P.C. the petitioner, namely, Shri

Ashok Verma, has prayed for quashing the FIR dated 23.03.2018 of Basistha P.S. Case No. 334/2018 registered under section 468/471 IPC read with section 5 of the Assam Land Grabbing (Prohibition) Act, 2010 (for short 'the Act of 2010').

3. The background facts leading to filing this petition is briefly stated as under:-

“The respondent No. 2 -Shri Krishna Khaund, had lodged one FIR with the Officer-in-Charge, Basistha P.S. to the effect that he is the owner of a plot of land, measuring 03 kathas 08 lechas, covered by Dag No. 1289 (old), 165 (new) of Myadi Patta No. 282 (old)/05 (new) situated at Maidam Gaon, Beltola and he along with his brother were carrying out business there in the name and style 'M/S TAKI TUKI TEA' and weigh bridge, and that one Hanuman Prasad Agarwalla had fraudulently obtained one General Power of Attorney being deed No. 1526/04 dated 23.04.2004 in respect of said land and on the basis of the same he had executed one sale deed in favour of his son-in-law Ashok Verma and on the basis of said sale deed Ashok Kumar Verma and one Amit Baruah had illegally grabbed his land with the help of some antisocial elements and occupying the same. The power of attorney is false and the same could not be traced out in the Office of the Sub-Registrar, Guwahati. Upon the said FIR, the Officer-in-Charge, Basistha P.S. registered a case being Basistha P.S. Case No. 334/2018, under Sections 468/471 IPC read with Section 5 of the Act of 2010 and started investigation.”

4. Being aggrieved the petitioner, Shri Ashok Verma has approached

this court by filing the present petition for quashing the aforementioned FIR on the following grounds:-

(i)That, the respondent No.2 had filed one Title Suit being T.S. No. 144 of 2008 before the court of Civil Judge, Kamrup (M) seeking right, title and interest over the said plot of land and also for cancellation of the Power of Attorney, and the said suit was dismissed due to non-prosecution vide order dated 05.09.2014;

(ii)That, the respondent No.2 had also filed a Complaint Case, being Complaint Case No. 3092/08 before the Court of learned Chief Judicial Magistrate, Kamrup (M) and the same also came to be dismissed for non-prosecution vide order dated 13.08.2014;

(iii)That, the FIR impugned herein is not maintainable and is nothing but an abuse of the process of law and as the matter has been dealt with a competent court, re-opening of the same is hit by the principle of "Double Jeopardy", and hence, the FIR is liable to be quashed;

(iv)That, as on earlier two occasions two judicial forum have disapproved the claim of the informant, on the same subject matter, subsequent filing of FIR concealing this material information and on such count the FIR is liable to be quashed;

(v)That, no reason has been assigned for delayed filing of the FIR and as such it is barred by limitation;

5. Mr. Chamaria, the learned counsel for the petitioner, besides reiterating the grounds mentioned herein above submits that the respondent No.2 had filed the FIR concealing material information that upon the same subject

matter he had filed one Complaint Case and on account of dismissal of the same the second FIR is not maintainable on the same subject matter. Referring to a decision of Hon'ble Supreme Court in **Pramath Nath Talukdar and Surendra Mohan Basu vs. Saroj Ranjan Sarkar** reported in **1962 Supp(2) SCR 297**, Mr. Chamaria submits that a second complaint or a fresh complaint could be entertained after the dismissal of previous complaint under Section 203 [Criminal Procedure Code](#), when there was manifest error or manifest miscarriage of justice or when fresh evidence was forthcoming. And as the aforesaid condition have not been fulfilled herein this case, the FIR is not maintainable and therefore, it is contended to allow this petition.

6. Per contra, Mr. R. J. Baruah, the learned Addl.P.P. submits that admittedly, the first complaint was not dismissed on merit as it was dismissed for no prosecution and as such there is no bar in Cr.P.C. in respect of filing a second complaint upon the same subject matter. Mr. Baruah, further submits that here the respondent has not filed second complaint but one FIR and as such there is no merit in this petition and therefore, contended to dismiss the same.

7. On the other hand, Mr. G. Pathak, learned counsel for the respondent No.2 also adopted the submissions so advanced by Mr. R. J. Baruah, the learned Addl. P.P.

8. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record. Also, I have gone through the case law referred by Mr. Chamaria.

9. It is not in dispute that the respondent No.2 had filed one Title Suit being T.S. No. 144 of 2008 before the court of Civil Judge, Kamrup (M) seeking

right, title and interest over the same plot of land, in respect of which the present FIR has been filed, and also for cancellation of the Power of Attorney, and the said suit was dismissed by the learned court below due to non-prosecution, vide order dated 05.09.2014.

10. It is also not in dispute that the respondent No.2 had filed a Complaint Case, being Complaint Case No. 3092/08, under section 109/420/467/468/471/506/34 IPC before the Court of learned Chief Judicial Magistrate, Kamrup (M) and the same also came to be dismissed for non-prosecution vide order dated 13.08.2014.

11. Admittedly, also the said complaint was not dismissed on merit but on non prosecution. The order dated 13.08.2014, of the learned court below is the testament of such fact. A careful perusal of the same indicates that the case has been dismissed for lack of prosecution on account of repeated absence of the respondent No.2.

12. Having carefully gone through the case law i.e. **Pramath Nath Talukdar (supra)**, so referred by Mr. Chamaria, it has been held as under:-

“An order of dismissal under Section 203, Criminal Procedure Code, is, however, no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances, e.g., where the previous order as passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings, have been adduced. It cannot be said to be in the interest of justice that after a decision has been given against the complaint upon a full consideration of his case, he or any other person should be given another opportunity to have his complaint inquired into.”

13. In the case of **Jatinder Singh v. Ranjit Kaur**, reported in **2001) 2 SCC 570**, Hon'ble Supreme Court has held that - if the dismissal of the complaint was not on merit but on default of the complainant to be present there is no bar in the complainant moving the Magistrate again with a second complaint on the same facts. But if the dismissal of the complaint under Section 203 of the Code was on merits the position could be different.

14. Again in the case of **Shivshankar Singh v. State of Bihar**, **(2012) 1 SCC 130**, the Hon'ble Supreme Court has held that :

“18. Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, the second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit.”

15. Thus, the legal proposition that can be culled out from the above discussion is that if the dismissal of the complaint was not on merit, but, on default of the complainant to be present there is no bar in the complainant moving the Magistrate again with a second complaint on the same facts. And that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts

after disposal of the first complaint which could have tilted the balance in his favour and that the second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit.

16. As discussed herein above, the Complaint Case No. 3092/08, was not dismissed vide order dated 13.08.2014, by the learned court below, under section 203 Cr.P.C. Moreover, herein this case an FIR is being sought to be quashed not any complaint case. Therefore, this court is of the considered view that the conditions mentioned in the said case law referred by Mr. Chamaria, would not be applicable in all force to the facts herein this case and as such it would not advance the case of the petitioner.

17. No other ground has been canvassed before this by the learned counsel for the petitioner during argument. Thus, considering all the facts and circumstances on the record and also considering the submission of learned Advocates of both sides, I find this petition bereft of merit and accordingly the same stands dismissed.

18. In terms of above this Criminal Petition stands disposed of, leaving the parties to bear their own costs. Interim order, passed on 28.05.2018, stands vacated.

Comparing Assistant

JUDGE