

GAHC010131442018



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

Case No. : Crl.Pet./569/2018

ASHRAFUL ALAM
S/O DEWAN JOINAL ABEDIN, R/O B. BARUAH ROAD, ULUBARI, DIST.
KAMRUP (M), ASSAM, PIN- 781007

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP, ASSAM

2:AZIZUR RAHMAN
S/O LATE GIASUDDIN AHMED
NILKAMAL BYE LANE
HATIGAON
GUWAHATI
KAMRUP (M)
PIN- 78103

Advocate for the Petitioner : MR. I ALAM
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

02.05.2024

Heard Mr. S. Sinha, learned counsel for the petitioner. Also heard Mr. D.P. Goswami, leaned Additional Public Prosecutor appearing for the respondent No.1 and Mr. K. Bhattacharya, learned counsel for the respondent No.2.

2. By this application under Section 482 read with Section 397 Cr.P.C., the petitioner has prayed for quashing and setting aside the FIR dated 09.09.2015 and charge sheet No. 24/16 dated 31.01.2016 as well as the proceeding of GR Case No. 9856/2015 pending in the court of Additional Chief Judicial Magistrate, Kamrup, Guwahati.

3. The case of the petitioner is that an FIR has been lodged on 09.09.2015 filed by the respondent No.2 stating *inter alia* that a Title Suit was instituted by the respondent No.2 in the court of Civil Judge No.1 Kamrup, Guwahati vide T.S. Case No. 412/2016. The allegation against the petitioner in the said Title Suit is that an agreement was executed between the parties on 19.10.2012 for sale of a plot of land measuring 2 Katha (herein before referred as suit land) covered by Dag No. 394 (old)/3340 (new) of K. P. Patta No. 213 (old)/1812(new) situated at village Borsajai under Mouza, Beltola in the district of Kamrup (M) at a total consideration of Rs.44,00,000/- against which the informant paid an amount of Rs.28,00,000/- and the remaining balance amount of Rs.16,00,000/- is yet to be paid. Further, in pursuance of memorandum of understanding dated 30.09.2014, the respondent No.2 has taken over the possession of the suit land from the accused petitioner and thereafter, the informant/respondent No.2 developed the suit land by earth filling and started to reside along with his family by constructing a house thereon.

4. Subsequently, it has come to the knowledge of the respondent No.2/informant that the disputed land was under mortgage with Panjab National Bank, Fancy Bazar Branch, Guwahati. At the time of applying for the sale certificate, the petitioner stated in the affidavit that the said plot of land was free from all encumbrances. As the respondent No.2 paid the advance amount,

as such he requested the petitioner to register the deed of sale but he refused to do the same and also refused to return the advance consideration paid by the respondent No.2. Thereafter, the respondent No.2 was compelled to lodge the FIR against the present petitioner.

5. It was urged by the learned counsel for the petitioner that the offence under Section 420 IPC is not attracted here in this case as there is no allegation against the petitioner that he has dishonestly induced the respondent No.2 to deliver any property or to make alter or destroy the whole or any part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable property.

6. It is further submitted that it is a well settled law that in order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise. Further, it is submitted that there is no elements of cheating as under Section 420 IPC in the given facts and circumstances of the case in as much as there is no such intention as to cheat or dishonestly inducing delivery of property. According to learned counsel for the petitioner, the respondent No.2 since after purchasing the plot of land from the petitioner, has retained the said land by constructing his house thereon as such the FIR is liable to be quashed.

7. It is also the submission of the learned counsel for the petitioner that the Hon'ble Supreme Court in catena of decisions has pointed out clear distinction between a civil wrong in the form of breach of contract, nonpayment of money or disregard to and violation of the contractual terms and the criminal offence under Section 420 and 406 IPC. Repeated judgments of the Hon'ble

Supreme Court, however, are somehow overloaded and are not been applied and enforced. According to learned counsel for the petitioner, admittedly, a civil case between the parties is pending in the civil court and the offence alleged to be committed by the petitioner is a civil wrong and no criminal offence is committed by the petitioner under Section 420/506 IPC.

In support of his submission, learned counsel has relied on the following case laws:

(i) *Criminal Appeal, arising out of SLP (criminal) No.*

13485/2023 (Lalit Chaturvedi and Ors vs State of Uttar

Pradesh and another).

8. Per contra, Mr. K. Bhattacharya, learned counsel for the respondent No.2, has submitted that the accused petitioner presented himself before the respondent No.2 as the owner of the suit land situated under Beltola mouza claiming that the land is free from all encumbrances and he intends to sale the entire land and accordingly, he produced mutation certificate and non-encumbrance certificate and on the basis of which sale agreement was executed on 19.10.2012 and amount of 28 lakhs was paid as advance out of total consideration of 44 lakhs. Thereafter, the accused petitioner obtained the sale permission from the competent authority but did not want to execute the sale deed by showing different grounds. On going through the sale permission, it was detected that the land falls under the green belt. However, the petitioner demanded extra money for completion of sale process and another memorandum of understanding was executed on 30.09.2014 and handed over the possession of the said land to the respondent No.2.

9. Learned counsel for the respondent No.2 has further contended that as the accused petitioner has failed to execute the sale deed, respondent No.2 has issued a legal notice to the petitioner. Subsequently, when FIR was about to lodge, it has come to the notice that the said land was under mortgage prior to the sale agreement with the Punjab National Bank. By suppressing the fact of mortgage, the petitioner cheated the respondent No.2 and played fraud on the respondent No.2 by obtaining sale permission without clearing the mortgage property. It is further submitted that the petitioner has fraudulently handed over the possession of the land without revealing the fact that the accused petitioner has already obtained loan from Punjab National Bank by mortgaging the suit land. Thus, he cheated the petitioner.

10. According to learned counsel for respondent No.2, the conduct of the accused/petitioner would go to show that there is clear intention to cheat the petitioner to grab the advance amount which he has not yet refunded nor he has executed the sale deed in favour of the respondent No.2. Hence, the learned counsel for the respondent No.2 prays for dismissal of the prayer of the petitioner for quashing the FIR/ charge-sheet/ proceeding of GR Case No. 9856/2015.

In support of his submission, learned counsel for the respondent has relied on the following case laws:

(i) *AIR 2020 SC 909 (Rajeev Kourab vs Baishnav and others.*

(ii) *(2023) 3 Supreme 61 (CBI vs Aryan Singh etc.)*

11. On the other hand, Mr. G. P. Goswami, learned Additional Public Prosecutor also has submitted in the same tune by stating that as there is an

allegation against the petitioner that he had fraudulently handed over the land by taking money, even though knowing the fact that the land is under mortgage with Punjab National Bank, the proceeding of the case cannot be quashed.

12. Having heard the learned counsel for the parties, it is to be decided whether the High Court while exercising jurisdiction under Section 482 Cr.P.C. is required to be considered whether the accused has committed the offence under Section 420/506 IPC.

13. The Hon'ble Supreme Court in catena of decisions has held that it is no more res integra that exercise of power under Section 482 Cr.P.C. to quash a criminal proceeding is only when an allegation made in the FIR or the charge-sheet constitutes the ingredients of the offence alleged. Interference by the High Court under Section 482 Cr.P.C. is to prevent the abuse of process of any court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the court except in very exceptional circumstances, at the initial stage of criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 Cr.P.C. for quashing criminal proceedings. It is clear from the law laid down by the Hon'ble Supreme Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the court cannot quash a criminal proceeding.

14. In the case of *Priti Saraf and another vs state of NCT of Delhi and another* reported in (2021) O Supreme (SC) 139, it was observed as follows:

“In the matter of exercise of inherent power by High Court, only requirement is to see whether continuance of proceeding would be a total

abuse of process of court. Criminal Procedure Code contains a detail procedure for investigation, framing of charge and trial. In the event, when High Court is desirous of putting a halt to known procedure of law, it must use proper circumspection with great care and caution to interfere in complaint/FIR/charge-sheet in exercise of its inherent jurisdiction. In the instant case, it cannot be said that complaint does not disclose commission of offence. Ingredients of offences under Section 406 and 420 IPC cannot be said to be absent on the basis of allegations in complaint/FIR/charge-sheet. whether allegation in complaint are otherwise correct or not, has to be decided on the basis of evidence to be led during course of trial. Simply because there is remedy provided for breach of contract or arbitral proceedings initiated at instance of appellants, that does not by itself clothe court to come to a conclusion that civil remedy is only remedy and initiation of criminal proceedings in any manner will be abuse of process of court for exercising inherent powers of High Court under Section 482 Cr.P.C. for quashing such proceedings."

15. It has been further elucidated recently by the Hon'ble Supreme Court in the case of *Arnab Manaranjan Goswami vs state of Maharashtra and other*, (2020) SCC online (SC) 964 where jurisdiction of the High Court under Article 226 of the constitution of India and Section 482 Cr.P.C. has been analyzed at great length. It is thus settled that the exercise of inherent power of the High Court is an extra ordinary power which has to be exercised with great care and circumspection before embarking to scrutinize the complaint/FIR/charge-sheet in deciding whether the case is the rarest of rare case to scuttle the prosecution at its inception.

16. In the instant case, from the FIR as noted above, it cannot be said that the FIR did not disclose commission of an offence as alleged and the ingredients of offence under Section 420 and 506 IPC cannot be said to be absent on the basis of allegations in the FIR. It is settled that one is not supposed to dilate on this score or intent to present that the allegations in the

FIR will have to be accepted on the face of it and the truth or falsity of which would not be gone into by the court at this stage. Whether the allegations in the FIR were true or not, is to be decided on the basis of the evidence led at the stage of trial and observations of the Court in the case of Nagpur Steel & Alloys Pvt. Ltd. vs P. Radhakrishna and others (1997) SCC (Criminal) 1073 ought to be noticed. It was observed as under:

“we have perused the complaint carefully. In our opinion, it cannot be said that the complaint did not disclose the commission of an offence. Merely because the offence was committed during the course of commercial transaction, would not be sufficient to hold that the complaint did not warrant a trial. Whether or not the allegations in the complaint were true was to be decided on the basis of evidence to be led at the trial in the complaint case. It certainly was not a case in which the criminal trial should have been cut short. The quashing of the complaint has resulted in grave miscarriage of justice. We, therefore, without expressing any opinion on the merits of the case, allow this appeal and set aside the impugned order of the High Court and restore the complaint. The learned trial Magistrate shall proceed with the complaint and dispose of it in accordance with law expeditiously.”

17. In view of the aforesaid discussion, this Court is of the view that on perusal of the FIR/charge sheet, at this stage, it cannot be said that the FIR does not disclose commission of any cognizable offence.

18. Hence, the criminal petition is dismissed and disposed of accordingly.

19. However, it is clarified that what has been observed above is only for the purpose of disposal of this petition only. The trial court is directed to

proceed with the trial expeditiously without being influenced by the observation made in this judgment or taken as an expression of the opinion of this Court.

20. Interim order, if any, be vacated accordingly.

JUDGE

Comparing Assistant