

GAHC010157632024



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

Case No. : Crl.Pet./949/2024

MAJAN MIA @ APTAR UDDIN AND ANR
S/O LATE KUTUB ALI
R/O VILL- BHANGAPAR
PART-II, P.S. BRKHOLA, DIST. CACHAR, ASSAM, PIN-788817.

2: SAHAB UDDIN
S/O LATE KUTUB ALI
R/O VILL- BHANGAPAR
PART-II
P.S. BRKHOLA
DIST. CACHAR
ASSAM
PIN-788817

VERSUS

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

2:KAMALA DEVI @ SAMSUN NESSA LASKAR
W/O LATE RAMSINGH DUBI
R/O VILL- BHANGAPAR PART-II
P.S. BARKHOLA

DIST. CACHAR
ASSAM
PIN-78881

Advocate for the Petitioner : MR. L R MAZUMDER, MR E HUSSAIN,MR. A ISLAM

Advocate for the Respondent : PP, ASSAM, MRS. R CHETRI (R-2),MS. S RASUL (R-2),MR. M H RAJBARBHUIYAN (R-2)

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 21-11-2024

Heard Mr. L.R. Mazumder, the learned counsel for the petitioners. Also heard Mr. M.H. Rajbarbhuiyan, the learned counsel for the respondent no. 2 and Mr. K. Baishya, learned Addl. PP appearing for the State respondent no. 1.

2. This is an application u/s 528 of the BNSS, 2023 against the impugned order dated 09.05.2024 passed by learned Additional Sessions Judge, FTC, Cachar, Silchar in Criminal Revision No. 83/2023 and thereby upheld the order dated 12.01.2023 passed by learned ADM, Cachar, Silchar in M.R. Case No. 58M/2008 whereby the possession was declared in favour of the 1st party/respondent.

3. It is submitted by Mr. Mazumder that the learned Executive Magistrate passed the order without examining the possession over the disputed land and also without examining any neighbouring witnesses. The order was passed ex-parte against the present petitioner declaring possession in favour of the respondent/1st party. It is submitted that the 1st party filed a complaint before the learned ADM with an allegation *inter alia* that he is the owner and possessor of the scheduled land and the petitioner and others are disturbing his possession and for which prayer was made in the complaint for initiation of proceeding u/s 145/146 Cr.PC. The learned ADM accordingly initiated the proceeding and summons were issued to the present petitioner/2nd party who also entered into their appearance and filed their written statement. In the

written statement it is claimed their right and possession over the disputed land which is purchased by the father of the petitioner. But, without giving any opportunity of hearing the order was passed by the learned ADM on 09.05.2024 ex-parte, declaring the possession in favour of the respondent/ 1st party.

4. Referring to the Section 145 sub-section (4) of Cr.PC it is submitted by Mr. Mazumder that the Magistrate ought to have disposed off the matter after perusal of the statement made by the parties and after receiving all the evidence produced by them and if necessary the Magistrate can also record further evidence if he thinks fit. But here in the instant case an order was passed ex-parte against the present petitioner even without perusing the relevant documents and without offering any opportunity to the present petitioner to adduce their evidence and the relevant documents before the Court. Nor police report was called for. Accordingly, it is submitted that the order passed by the learned Executive Magistrate i.e. dated 09.05.2024 is liable to be set aside and quashed along with the order passed in Criminal Revision No. 83 of 2023 passed by the Additional Sessions Judge, FTC, Cachar, Silchar in Criminal Revision No. 83/2023 dated 12.01.2023 whereby the order of the learned Executive Magistrate was upheld.

5. Mr. Rajbarbhuiyan, the learned counsel for the respondent submitted in this regard that no illegality has been committed by the learned ADM as well as the learned Revisional Court while passing the order and declaring the possession in favour of the 1st party/ respondent. Further submitted that the summons were duly served on the petitioner/2nd party and accordingly they also appeared before the learned Executive Magistrate and submitted their written statement but in spite of several chances given to the present petitioner/2nd party, they

failed to appear before the learned Executive Magistrate and for which the evidence had to be recorded ex-parte. Further he submitted that the learned Magistrate after perusal of the evidence on record as well as the documents had passed the order after examining not only the 1st party/respondent but also examining the neighbouring witnesses and accordingly the possession was declared in favour of the present respondent/1st party. As such no illegality has been committed by the learned Trial Court below as well as the learned Additional Sessions Judge while passing the order.

6. Mr. Rajbarbhuiyan, learned counsel for the respondent further submitted that the police report is not necessary to declare the possession and here in the instant case the learned District Magistrate duly examined the 1st party/respondent as well as the neighbouring witnesses and on the basis of which the possession was declared in favour of the respondent. He further submitted that after receipt of the notice of the 2nd party/petitioner filed his written statement after lapse of one year and after filing the written statement the petitioner remained absent in spite of several chances given by the District Magistrate. The petitioner neither appeared before the learned district magistrate nor produced any evidence in his favour and also failed to cross-examine the witnesses produced by the respondent/1st party in spite of ample opportunity given to the present petitioner. Thus, the order passed by the learned District Magistrate as well as the learned Court below needs no interference of this Court and the learned Court below had arrived at a concurrent findings. Mr. Rajbarbhuiyan further submits that the power conferred u/s 482 Cr.PC should be exercised sparingly with circumspection and only in rare cases to correct the illegality or when there is miscarriage of justice. In the

instant case the learned District Magistrate and the learned additional Sessions Judge, FTC had rightly arrived at a decision and declared the possession in favour of the respondent/1st party. In this context he also relied on the decision of the Hon'ble Supreme Court reported vide **(2008) 1 SCC 474** and emphasised on para 7, 8 and 13 of the said judgment which is quoted hereunder:-

"7. It is well established principle that inherent power conferred on the High Courts under [Section 482](#) Cr.P.C. has to be exercised sparingly with circumspection and in rare cases and that too to correct patent illegalities or when some miscarriage of justice is done. The content and scope of power under [Section 482](#) Cr.P.C. were examined in considerable detail in [Madhu Limaye v. State of Maharashtra](#) AIR 1978 SC 47 and it was held as under :

"The following principles may be stated in relation to the exercise of the inherent power of the High Court -

(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code."

8. In [State v. Navjot Sandhu](#) (2003) 6 SCC 641 (para 29), after a review of large number of earlier decisions, it was held as under :

"29. The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the [Criminal Procedure Code](#). This power cannot be exercised as against an express bar in some other enactment."

13. Before parting with the case, we feel constrained to observe that in spite of repeated pronouncements of this Court that inherent power under [Section 482](#) Cr.P.C. should be exercised sparingly with circumspection in rare cases and that too when miscarriage of justice is done, the High Court entertained the petition under [Section 482](#) Cr.P.C., the ultimate result whereof was that the order of bail granted in favour of the accused for an offence under [Sections 324, 352 and 506](#)

IPC enured to their benefit even after the offence had been converted into one under [Section 304 IPC](#) and also subsequently when charge had been framed against them under [Section 302](#) read with [Section 34 IPC](#). The accused did not remain in custody even for a single day nor did they approach the Court of Chief Judicial Magistrate or Sessions Judge for being granted bail under [Section 304](#) or [302 IPC](#), yet they got the privilege of bail under the aforesaid offences by virtue of the order passed by the High Court. The dockets of the High Courts are full and there is a long pendency of murder appeals in the High Court from which this case has arisen. Ends of justice would be better served if valuable time of the Court is spent in hearing those appeals rather than entertaining petitions under [Section 482 Cr.P.C.](#) at an interlocutory stage which are often filed with some oblique motive in order to circumvent the prescribed procedure, as is the case here, or to delay the trial which will enable the accused to win over the witnesses by money or muscle power or they may become disinterested in giving evidence, ultimately resulting in miscarriage of justice.”

7. He further relied on another decision of the Hon’ble Supreme court passed in Criminal Appeal No. 986 of 2008 [Monica Kumar (Dr.) and Another v. State of Uttar Pradesh and Others] (2008) 8 SCC 781 wherein also the Hon’ble Apex Court has expressed the view that the inherent power u/s 482 Cr.PC should be exercised sparingly and with caution.

8. Citing those decisions, the learned counsel Mr. Rajbarbhuiyan submitted that it is not at all a fit case wherein the order passed by the learned District magistrate as well as the learned Additional sessions Judge, FTC in criminal Revision no. 83/2023 can be set aside and quashed and accordingly he prays for dismissal of the criminal petition.

9. Hearing the entire submission of the learned counsel for both sides, I have also perused the case records and annexure filed by the petitioner. It is of admitted position that the respondent/ 1st party lodged a complaint before the learned District Magistrate claiming possession over disputed land wherein the District Magistrate initiated a proceeding u/s 145/146 Cr.PC and also issued

notice to the petitioner/2nd party. Accordingly, the petitioner/2nd party also appeared and filed his written statement claiming right and possession over the suit land stating that the disputed land was purchased by the father of the petitioner and also claimed her possession over the said disputed land. But, after filing of the written statement the petitioner remained absent in spite of ample opportunity given to him for production of witnesses and also for cross-examining the PWs. But the petitioner failed to appear before the learned District Magistrate and finding no other alternative only the evidence of PWs were recorded ex-parte by the learned District Magistrate. Further it is seen that after recording of the evidence of the respondent/1st party and some neighbouring people as PWs, the learned Magistrate had arrived at a decision and declared the possession in favour of the present respondent/1st party. It is a fact that the magistrate did not call for any police report but considering the evidence on record and the documents produced before the Magistrate, the case was decided and the possession was declared in favour of the respondent. accordingly this Court is of the opinion that the learned District magistrate while passing the order dated 12.01.2023 in M.R. Case No. 58M/2008 as well as the learned Additional Sessions Judge, FTC, Cachar, Silchar who upheld the order of the learned Magistrate vide its judgment and order dated 09.05.2024 passed in Criminal Revision No. 83 of 2023 has not committed any irregularity or mistake for interference of this Court not any illegality has been committed for setting aside and quashing of the said order.

10. In view of the above, the view of this Court that it is not a fit case to exercise the power u/s 482 Cr.PC for setting aside and quashing of the order passed by the learned Magistrate dated 12.01.2023 in M.R. Case No. 58M/2008 and the order passed by the learned Additional Sessions Judge, FTC, Cachar,

Silchar in Criminal Revision No. 83 of 2023. Accordingly, the present revision petition stands dismissed. However, both the parties are at liberty to approach the civil forum for appropriate relief.

11. In view of the above observations, the criminal petition stands disposed of.

JUDGE

Comparing Assistant