

GAHC010198382023



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

Case No. : Crl.Pet./943/2023

ARUP KUMAR ALLAMMAN AND ANR
S/O PARMAL KUMAR SARMAH
PRESENTLY RESIDING AT VILL- 5 FBSU, AIR FORCE STATION, UTTARLAI,
P.O. AND P.S. BARMER
DIST. BARMER, RAJASTHAN,
PIN-344001

2: SMTI. OLEE PATGIRI ALLAMMAN @ ALEE PATGRI ALAMANN
W/O ARUP KUMAR ALLAMMAN
PRESENTLY RESIDING AT VILL- 5 FBSU
AIR FORCE STATION
UTTARLAI

P.O. AND P.S. BARMER
DIST. BARMER
RAJASTHAN

PIN-34400

VERSUS

MITALI PATGIRI DAS
D/O LATE KHAGENDRA NATH PATGIRI
W/O WARAT DAS
R/O 1 NO. DULIAJAN
P.O. ANANDAPARA
P.S. DULIAJAN
DIST. DIBRUGARH, ASSAM
PIN-786602

Advocate for the Petitioner : MR. K M HASSAN

Advocate for the Respondent : MR. P K ROYCHOUDHURY

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 13.06.2024

Heard Mr. K.N.Choudhury, learned Senior Counsel assisted by Mr. S.Parashar, learned counsel for the petitioner and Mr. PK Roy Choudhury, learned counsel for the respondent.

2. By filing this application under Section 482 CrPC, the petitioners have prayed for setting aside and quashing of the Complaint Case being C.R.Case No. 90^c/ 2022 under Sections 415/420/468 of the IPC, pending before the court of learned SDJM (S), Dibrugarh.

3. The petitioner No. 1 is working in Indian Air Force and petitioner No. 2 is the wife of petitioner No. 1. The parents of petitioner No. 2 are Khagendra Nath Patgiri and Mohini Patgiri and both were expired. The petitioner No. 2 has one elder sister namely, Mitali Patigiri Das who is the opposite party herein this case and one brother namely, Apurba Patgiri who expired on 05.07.2008.

4. The brief fact of the case is that on 20.10.2022, the opposite party filed the complaint case against the petitioners before the CJM, Dibrugarh and the case was registered accordingly vide CR Case No. 90^c/ 2022 and the case was subsequently transferred to the file of SDJM, Dibrugarh. Thereafter, the statement of the opposite party and her witnesses were recorded under Section 202 CrPC and the learned SDJM took cognizance of the case under Sections 415/420/468 IPC and summons was issued accordingly to the petitioners. The petitioners being residing in Rajasthan could not appear before the trial court

and took adjournment on subsequent dates.

5. The learned counsel for the petitioners has argued that on a plain reading of the complaint petition filed by the opposite party, it clearly transpires that the allegations in the complaint petition are of civil nature and the opposite party has used the criminal proceeding as an instrument to harass the petitioners.

6. It is further submitted by the learned counsel for the petitioners that the opposite party had alleged in the complaint petition that petitioners have misappropriated landed property of Late Khagendra Nath Patgiri as well as money from the savings account of UCO Bank, Chennai Branch and Duliajan Branch and LIC policies being annuity No. 4298 in the name of Late Khagendra Nath Patgiri to the tune of Rs.1 Crore. Though it was alleged that the maturity amount of LIC policies was Rs.1 Crore but on verification, it reveals that the amount is only Rs.10

Lakhs.

7. According to learned counsel for the petitioners, the learned trial court in a mechanical manner and without applying judicial mind took cognizance of the complaint case. On perusal of complaint case, it reveals that essential ingredients of Section 420/468 IPC are absolutely missing. As such, continuance of the instant proceeding will be a sheer abuse of process of the court.

8. It is also the submission of learned counsel for the petitioners that the father of petitioner No.2 acquired some properties at Bajali district out of settlement of his ancestral properties and also acquired some properties by purchase. Out of the seven properties mentioned in the complaint petition, two properties which were in the name of Late Khagendra Nath Patgiri covered by Dag No. 661 and 662, were bought by the petitioner No. 2 by executing deed of

sale which was a settlement between the sisters wherein the elder sister/ complainant would take the properties situated at Moran and Duliajan and the petitioner No. 2 would take the properties situated at Bajali. Rest of the properties covered by Dag No. 468 and 489 of Patta No. 69 in the name of the petitioners' father had been deleted at Sl. No. 24 as would be evident from the jamabandi that he had sold his share during his life time to one Dipak Talukdar. In Dag No.488, the name of petitioners' father Late Khagendra Nath Patgiri does not even appear.

9. It was also pointed out that in Dag No. 522, the name of the petitioners' father has been deleted as he had exchanged these properties with other properties during his life time and in Dag No. 283, the name of the petitioners' father is still present at sl. No.7 and as such, the claim of the complainant that those have been misappropriated by the petitioners is absolutely false and baseless.

10. Learned counsel for the petitioners has also argued that Late Khagendra Nath Patgiri had retired in the year 2003 and the two accounts of UCO Bank were used and maintained by him for his own expenses and medical necessities of his wife and son till they expired in the year 2015 and 2008 respectively. Only about 2 years after the death of his wife, in the year 2017, Late Khagendra Nath Patgiri started living with the petitioners. Till 2017, when Late Khagendra Nath Patgiri was living in Moran, the complainant was also living in Moran and had knowledge and information about the retirement and pension benefits of her father and now after his death, she is claiming the retirement and other benefits of her late father.

11. Regarding LIC policy to the tune of Rs.1 crore, according to learned counsel for the petitioners, the petitioners have no knowledge and if such policy

exists, the complainant should have filed a death claim before the proper authorities. However, the petitioners' father had received an amount of Rs.10 Lakhs as settlement in lieu of acquisition of his land at Moran for highway development which was equally distributed by their father by opening two LIC policies of Rs. 5 Lakhs each for both of his two daughters in the year 2017.

12. The last limb of argument of the learned counsel for the petitioners is that the allegation leveled by the complainant against the petitioners are absolutely false and baseless and no evidence of any misappropriation of cheating and forgery has been shown in the complaint as such, the cognizance taken under Section 415/420/468 IPC is unfair and needs interference by this court for the ends of justice.

13. In response to the submission of learned counsel for the petitioners, learned counsel for the respondent denied that the complaint filed by the respondent against the petitioners is completely civil in nature. The complaint petition filed by the respondent clearly reveals that there are ingredients of Sections 415/420/468 IPC and accordingly, learned trial court took cognizance in the complaint case. There is no abuse in the process of law as alleged by the petitioners.

14. It was further submitted that though the disputes between the parties are with regard to the properties including the service and retirement benefits left by their deceased father, but the conduct as narrated in the complaint petition clearly shows the evil intention of the petitioners to misappropriate the entire land and other properties left by their father by depriving the respondent from her legitimate entitlement.

15. Learned counsel for the respondent has also contended that her father

became seriously ill during the Covid period and was hospitalized for several months. During the said period, lot of money was spent for his treatment and he died on 29.01.2022. It was alleged that during the period of his illness, in the name of treatment of their father, both the petitioners made transaction of the accounts of their father and misappropriated huge amount of money. In spite of repeated request, the petitioners refused to disclose the account details of Late Khagendra Nath Patgiri. According to learned counsel for respondent, the disputes between the parties in the present proceeding contain the ingredients of criminal offences and as such, the present criminal petition is without any merit and liable to be dismissed.

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

- a. *(2014) 3 SCC 383 (Bhaskarlal Sharma & anr. –vs- Monica & ors.*
- b. *AIR 2021 SC 19818 (M/s Niharika Infrastructure Ltd. –vs- State of Maharashtra & Ors.)*
- c. *(2008)14 SCC 1 (Rukmini Narvekar –vs- Vijayasatarbekar & ors*
- d. *(2009) 8 SCC 751 (Md. Ibrahim & ors –vs- State of Bihar & anr.)*
- e. *(2017) 2 SCC 779 (State of Telangara vs- Habib Abdullah Jeelani & Ors.*
- f. *(2013) 2 SCC 801 (Arun Bhandari –vs- State of Uttar Pradesh & Ors)*

17. The law with regard to exercise of jurisdiction under [Section 482](#) of Cr.P.C. to quash complaints and criminal proceedings has been succinctly summarized by the Hon'ble Apex Court in the case of [***Indian Oil Corporation v. NEPC India Limited and Others***](#), after considering the earlier precedents. It will be apposite to refer to the following observations in the said case, which reads

thus:

“12. The principles relating to exercise of jurisdiction under [Section 482](#) of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few —Madhavrao [Jiwajirao Scindia v. Sambhajirao Chandojirao Angre](#) [(1988) 1 SCC 692 : 1988 [SCC \(Cri\) 234](#)] , [State of Haryana v. Bhajan Lal](#) [1992 Supp (1) SCC 335 : 1992 [SCC \(Cri\) 426](#)] , [Rupan Deol Bajaj v. Kanwar Pal Singh Gill](#) [(1995) 6 SCC 194 : 1995 [SCC \(Cri\) 1059](#)] , [Central Bureau of Investigation v. Duncans Agro Industries Ltd.](#) [(1996) 5 SCC 591 : 1996 [SCC \(Cri\) 1045](#)] , [State of Bihar v. Rajendra Agrawalla](#) [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , [Rajesh Bajaj v. State NCT of Delhi](#) [(1999) 3 SCC 259 : 1999 [SCC \(Cri\) 401](#)] , [Medchl Chemicals & Pharma \(P\) Ltd. v. Biological E. Ltd.](#) [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , [Hridaya Ranjan Prasad Verma v. State of Bihar](#) [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , [M. Krishnan v. Vijay Singh](#) [(2001) 8 SCC 645 : 2002 [SCC \(Cri\) 19](#)] and [Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque](#) [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] .

The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(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 mala fides/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 proceeding 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.

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In [G. Sagar Suri v. State of U.P.](#) [(2000)

2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8) "It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under [Section 482](#) of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under [Section 250](#) CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

18. In the case of ***Sagar Suri and Another v. State of U.P. and Others*** reported in (2000) 2 SCC 636, the Hon'ble Supreme Court has held that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. The Court also observed that though no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the

end of such misconceived criminal proceedings, in accordance with law.

19. In the case of Prof. ***R.K. Vijayasarathy and Another v. Sudha Seetharam and Another*** reported in (2019) 16 SCC 739 has culled out the ingredients to constitute the offence under [Sections 415](#) and [420](#) of IPC, as under:

“ [Section 415](#) of the Penal Code reads thus:

“415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.”

20. The ingredients to constitute an offence of cheating are as follows:

20.1. There should be fraudulent or dishonest inducement of a person by deceiving him,

20.2. The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

20.3. The person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and

20.4. In cases covered by 20.3. above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

20.5. A fraudulent or dishonest inducement is an essential ingredient of the

offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

21. [Section 420](#) of the Penal Code reads thus:

“420. Cheating and dishonestly inducing delivery of property.—

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

22. The ingredients to constitute an offence under [Section 420](#) are as follows:

22.1. A person must commit the offence of cheating under [Section 415](#); and

22.2. The person cheated must be dishonestly induced to

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

23. Cheating is an essential ingredient for an act to constitute an offence under [Section 420](#).

24. A similar view has been taken by the Hon'ble Supreme Court in the cases of [***Archana Rana v. State of Uttar Pradesh and Another***](#) reported in (2021) 3 SCC 751, [***Deepak Gaba and Others v. State of Uttar Pradesh and Another***](#) reported in (2023) 3 SCC 423 and [***Mariam Fasihuddin and Another v. State by Adugodi Police Station and Another***](#) reported in (2024) SCC Online SC 58.

25. It could thus be seen that for attracting the provision of [Section 420](#) of IPC,

the FIR/complaint must show that the ingredients of [Section 415](#) of IPC are made out and the person cheated must have been dishonestly induced to deliver the property to any person; or to make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. In other words, for attracting the provisions of [Section 420](#) of IPC, it must be shown that the FIR/complaint discloses:

- (i) the deception of any person;
- (ii) fraudulently or dishonestly inducing that person to deliver any property to any person; and
- (iii) dishonest intention of the accused at the time of making the inducement.

26. The averments with regard to the present petitioners as have been found in the complaint as well as in the statement under Section 200 and 202 CrPC, the allegation is that in 2015, the petitioner No. 2 deserted the complainant after the death of their mother Late Mohini Patgiri. Taking advantage of the old age illness, unhealthy physical condition of her father Late Khagendra Nath Patgiri, the petitioners took her father with them to live at their official quarter at Mohanbari. Her father died on 29.01.2022 but the petitioners did not inform her about his death. The petitioners misappropriated landed properties of Bajali as well as also misappropriated LIC policies of her father. She being the legal heir of Late Khagendra Nath Patgiri is entitled to equal share but the petitioners have deprived her and has misappropriated the assets of her father. She has requested the petitioners to furnish her all documents including debit card, LIC policy, Passbook, death certificate, documents of landed property of her deceased father but the petitioners refused to furnish the details.

27. A perusal thereof would reveal that the allegation against the petitioners is

that they have misappropriated the landed properties, LIC policy, Bank Savings, pension benefit etc. of their deceased father Late Khagendra Nath Patgiri. The dishonest inducement is the *sine qua non* to attract the provisions of Section 415 and 420 IPC. It has to be noted that no role of inducement has been attributed to the present petitioners.

28. In the case of ***Usha Chakraborty & anr. –vs- State of West Bengal & anr.*** reported in (2023) SCC Online SC 90, it was held that where a dispute which is essentially a dispute of civil nature, is given cloak of a criminal offence, then such disputes can be quashed by exercising the inherent powers under Section 482 CrPC.

29. In the case in hand, the present disputes between the parties relates to misappropriation of landed properties, savings of their father in Bank, LIC policies etc which would not attract prosecution for criminal offence. From the nature of allegation in the complaint petition, this court finds that it is a case of civil dispute and the criminal court has no jurisdiction to decide the share of the respondent on the basis of the documents available in the record regarding landed properties of Late Khagendra Nath Patgiri, pensionary benefit etc.

30. In the case of ***Radha Mohan Pal –vs- State of Bihar*** reported in 2013 (2) PLJR 287, it was held that criminal court has no jurisdiction to decide the share of the parties.

31. In view of the aforesaid discussion, this court on the basis of allegation in the complaint petition, finds no specific ingredients of any criminal offence against the petitioners in the nature of disputes as alleged in the complaint petition. Therefore, the proceeding vide C.R. Case No. 90^c/ 2022 against the petitioners is hereby quashed.

In the result, criminal petition is allowed and disposed of accordingly.

JUDGE

Comparing Assistant