

GAHC010206872023



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

Case No. : Crl.Pet./997/2023

JAHANARA RAHMAN @ JAHANARA ROHMAN
W/O LATE DR. AHMED HADIUR RAHMAN
R/O TITABAR NA-ALI,
WARD NO. 6, P.O. TITABAR
DIST. JORHAT, ASSAM
PIN-785630

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE LEARNED PP, ASSAM

2:HASAN KHALID HAIDER
S/O LATE AHMED HAIDER SHAH RAHMAN
R/O OLD BALIBAT
WARD NO. 6

P.O. JORHAT

DIST. JORHAT
ASSAM
PIN-78500

Advocate for the Petitioner : MR. M DUTTA

Advocate for the Respondent : MR. K. K. PARASHAR, ADDL. PP, ASSAM

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. M. Dutta, Advocate.
For the Respondents : Mr. K. K. Parashar, Addl.P.P.
Mr. S. M. Abdullah P., Advocate.
Date of Hearing : 08.05.2024
Date of Judgment : 22.05.2024

JUDGMENT & ORDER (CAV)

1. Heard Mr. M. Dutta, learned counsel for the petitioner. Also heard Mr. K. K. Parashar, learned Additional Public Prosecutor for the State of Assam representing the respondent No. 1 and Mr. S. M. Abdullah P., learned counsel for the respondent No. 2.
2. The present criminal petition is filed under Section 482 of the Cr.P.C., praying for quashing of FIR dated 06.02.2023 registered as Titabar P.S. Case No. 24/2023 corresponding to G.R. Case No. 52/2023 under Sections 420/468/506/120B of IPC.
3. The informant filed a petition in the Court of learned Sub Divisional Judicial Magistrate, Titabar, which was registered as C.R. Case No. 03/2023. Thereafter, the learned Judicial Magistrate First Class, Titabar under its order dated 01.02.2023 forwarded the complaint along with documents annexed thereto to the jurisdictional Police Station with a direction to investigate into the matter by registering a police case and to submit Final Form. Accordingly, Titabar P.S. Case No. 24/2023 under Sections 420/468/506/120(B) of IPC was registered.
4. The gist of the dispute as reflected from the complaint so made, are to the

following effect:-

- I. The informant is the legal heir of one Late Dr. Ahmed Hadiur Rahman, who expired on 09.08.2021.
- II. Said deceased Dr. Rahman was the owner and recorded pattadar of a plot of land measuring 2 Bighas 3 Kathas 8 Lechas covered by Dag No. 1078 of P.P. No. 27 along with a building standing thereon situated at Titabar Town.
- III. On the demise of said Dr. Ahmed, the informant and other legal heirs have inherited the aforesaid property and accordingly, they applied for Next of Kin (NOK) certificate before the SDO, and accordingly, NOK certificate was issued.
- IV. However, on an objection filed by the petitioner/accused against issuance of such NOK Certificate in favour of the informant and other legal heirs of the deceased, the Sub Divisional Officer, revoked the said certificate by an order dated 06.08.2022, after hearing the parties and held that as the marriage between the deceased and the accused/objector is disputed, till such dispute is resolved, the matter shall be kept in abeyance.
- V. The further allegation made is that the accused has criminally transferred the property unto herself in exclusion of the legal heirs. It is also contended that the accused is not a legally married wife of Late Dr. Rahman and on the other hand, she is the mistress of the deceased.
- VI. According to the informant, through an RTI report dated 01.02.2022, the informant could learn that the marriage certificate on the basis of which the accused/petitioner claims herself to be the married wife of the deceased Late Dr. Rahman, is a fake certificate and the same does not

bear the signature of the parties i.e. accused and the deceased.

VII. It was an allegation that the accused No. 1 on the basis of the forged documents (marriage certificate) and in connivance with other accused persons had illegally and without following due process of law, applied for mutation of her name in the record of rights and mutation was granted illegally by the competent authority under its order dated 07.11.2022. The other accused persons are the Kazi, who purportedly solemnised marriage, the Revenue Circle Officer, who passed the order dtd.7.11.2022 and 29.12.2022.

5. It is an admitted fact that the complaint was filed before the Court of learned Sub Divisional Judicial Magistrate, Titabor on, 01.02.2023 and on the same date, i.e. on 01.02.2023, the informant also filed a suit before the Court of learned Civil Judge, Jorhat which is registered as Title Suit No.04/2023. The pleadings made in the aforesaid Title Suit and the statements made in the complaint are almost similar and replica.

6. The relief sought for in the Title Suit are quoted herein below:-

- (i) *A decree declaring the suit in favour of the plaintiff.*
- (ii) *Decree be passed for eviction of the defendant from the suit property;*
- (iii) *Decree declaring that the Defendant has no legal status as a wife of the deceased, Late Ahmed Hadiur Rahman.*
- (iv) *A Decree for cancellation of Mutation of the defendant pertaining to the suit property in the Record of Rights.*
- (v) *A Decree declaring the plaintiff and the proforma Defendants No. 2 to 13 as the legal heirs of the deceased late Ahmed Hadiur Rahman.*

(vi) *A decree for recovery of Khas possession of the suit property by evicting the defendant No. 1, her men and materials from the suit property.*

(vii) *A decree for permanent injunction restraining the defendant No. 1 from entering into the suit property and to do any other act(s) over the suit property.*

(viii) *Cost of the suit*

(ix) *For any other relief or reliefs which the Hon'ble Court may deem fit and proper".*

7. It is also on the record that the accused has already filed a written statement in the aforesaid suit.

8. The certificate issued by the accused Kazi, is brought on record by way of an affidavit filed by the respondent/informant in the present proceeding.

9. Mr. M. Dutta, learned counsel for the petitioner seeking quashment of the FIR argues the following:-

I. A bare perusal of the FIR/Complaint dated 01.02.2024, it is clear that no cognizable offence or offences of any kind is disclosed.

II. The RTI reply relied on by the respondent/informant itself reveals that the accused Kazi who has not denied the issuance of the alleged fake certificate and his signature. Therefore, it cannot be said to be a fraudulent certificate and therefore, there is neither any offence of forgery nor any offence of forgery for the purpose of cheating, cheating and dishonestly inducing delivery of property are being attracted on the face of the complaint filed.

III. On the same set of allegations, a suit is already pending and therefore, the FIR is an abuse of the process of the Court. The disputes between the parties are completely civil in nature, for which the informant had already

approached the competent civil and revenue Court and therefore, this is a fit case for quashment in exercise of power under section 482 of Cr.P.C.

IV. In support of such contention, Mr. Dutta, relies on the decision of the Hon'ble Apex Court in the case of **State of Haryana and Ors. –Vs- Ch. Bhajan Lal and Ors** reported in **AIR 1992 SC 604**, **Naresh Kumar and Ors. –Vs- The State of Karnataka and Ors** reported in **MANU/SC/0193/2024** and **Shafiya Khan –Vs- State of U.P. and Ors** reported in **(2022) 4 SCC 549**.

10. Per contra Mr. S. M. Abdulla P., learned counsel for the informant/respondent argue the following:-

I. The investigation of the Titabor P.S. Case No. 24/2023 is in its very initial stage and proper investigation is required to unearth the truth.

II. The FIR clearly makes out commission of cognizable offences Sections 420/468/506/120B of IPC.

III. The investigation is required to find out whether the offence under Sections 198/404 of IPC has been committed inasmuch as using a certificate as true knowing it to be false comes under Section 198 of IPC.

IV. Referring to the decision of the Hon'ble Apex Court in the case of **Neeharika Infrastructure Pvt. Ltd. –Vs- State of Maharashtra and Ors** reported in **2021 19 SCC 401**, Mr. Abdullah, learned counsel contends that when the complaint discloses commission of some crime, then the High Court must keep its hands off and allow the Investigating Agency to complete the investigation without any fetter and also should refrain from passing order which may impede the investigation.

V. Referring to the judgment of the Hon'ble Apex Court in **Kamaladevi**

Agarwal –Vs- State of W.B and others reported in **(2002) 1 SCC 555**, it is contended that the revisional or inherent powers of quashing should not be exercised at the initial stage and such power can be exercised at that stage when the allegations made in the complaint or FIR, even if taken at their face and accepted in entirety do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of jurisdiction under Section 482 of the Cr.P.C.

VI. Relying on the decision of the Hon'ble Apex Court in the case of **Medchl Chemicals & Pharma (P) Ltd –Vs- Biological E. Ltd and others** reported in **(2000) 3 SCC 269**, Mr. Abdullah, learned counsel contends that in the matter of exercise of High Court's inherent power, the only requirement is to see whether continuance of the proceeding would be a total abuse of the process of the Court and to stall the investigation and trial, the High Court must use a proper circumspection with great care and caution to quash a complaint in exercise of its inherent power. In this regard, Mr. Abdullah, learned counsel also places reliance on the decision of the Hon'ble Apex Court in **Padal Venkata Rama Reddy Alias Ramu –Vs- Kovvuri Satya Narayana Reddy and Others** reported in **(2011) 12 SCC 437**.

11. A Coordinate Bench under its order dated 18.09.2023, while issuing notice of motion, called for the case diary and directed the Investigating Officer not to take any coercive action against the petitioner.
12. The case diary has been received and relying on the case diary, the learned Additional Public Prosecutor, while assisting this Court has submitted that the investigating officer has recorded the statement of the accused Kazi, and the said Kazi has not denied issuance of certificate, however has stated that while issuing

the certificate, proper procedures as required under Assam Moslem Marriages and Divorces Registration Act, 1935 were not followed.

13. This court has given anxious consideration to the arguments advanced by the learned counsel for the parties. Also perused the material available on record including the case diary and the affidavit-in-opposition filed on behalf of the informant/respondent.

14. From the judgments, relied on by the learned counsel for the parties, this Court can carve out the following propositions of law.

I. There is no iota of doubt that the Court can exercise inherent power under Section 482 of Cr.P.C, 1973, to quash an FIR, where no cognizable offence of any kind is disclosed in the FIR. It is equally well settled that while exercising its inherent power under Section 482 of Cr.P.C., in a matter dealing with quashing of FIR, such power can be exercised where the Court is satisfied that continuance of proceeding would be a total abuse of process of court and such power is to be exercised sparingly, and only in appropriate cases and great care and caution should be taken while exercising such power.

II. It is also equally well settled that a complaint disclosing civil transaction may also have criminal texture and in such a case, the High Court is to see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted, the High Court should not hesitate to quash the criminal proceeding to prevent abuse of the process of the Court (**Paramjeet Batra –Vs- State of Uttarakhand and Ors.** reported in **(2013) 11 SCC 673**)

III. In the case of **Prashant Bharati –Vs- State of NCT of Delhi**

reported in **(2013) 9 SCC 293**, the Hon'ble Apex Court held that if the material relied upon by the accused is sound, reasonable and indubitable, when the material relied on by the accused is sufficient to reject and overrule the factual assertion contained in the complaint i.e. the materials are such which should pursue a reasonable person to dismiss and condemn the factual basis of accusation as false, when the material relied upon by the accused has not been refuted by the prosecution complainant and or material such that it cannot be justifiably refuted by the prosecution/complainant and when proceeding with the trial would result in an abuse of process of the court, the court shall not be powerless to quash a proceeding.

15. Having regard to the aforesaid settled propositions of law, now let this Court consider the present case.
16. In the case in hand, and from the pleadings made in the complaint as well as the affidavit-in-opposition relied on by the informant, the following facts are not disputed.
 - I. The marriage certificate being SL No. 011/NAL/18 dated 15.05.2018 was issued by the accused Kazi. However, a dispute is being raised so far relating to the adherence of procedure required to be followed to issue such a certificate under the Assam Moslem Marriage and Divorces Registration Act 1935 and the resultant doubt over the validity of the marriage.
 - II. A suit has been filed for declaration that the marriage between the deceased Dr. Rahman, and the accused petitioner is having no legal status, is pending determination in Title Suit No. 04/2023. and such suit is filed by the informant.

III. The primary dispute is as regards the title over the properties left behind by Dr. Rahman and it is the allegation that the accused/petitioner is not a legally married wife of the deceased Dr. Rahman and therefore she is not entitled for the properties left behind by the deceased Dr. Rahman.

IV. Mutation was granted over the disputed property in favour of the accused and such order of mutation is under challenge and pending consideration in a Revenue Appeal preferred by the informant.

17. Therefore, from the aforesaid, the dispute is essentially of a civil nature though a criminal texture is given to it, so far same relates to the marriage certificate issued by the Kazi.

18. To commit an offence of forgery, it is prima facie to be disclosed that somebody makes any false document with intent to cause damage or injury to public or to any person or to support any claim or title or to cause any person to part with property or to enter into any express or implied contract or to intent to commit fraud. In the case in hand, the document i.e. the marriage certificate is not disputed by the informant inasmuch as it is his case that the Marriage Certificate was issued by the Kazi but the procedures were not followed and the couples were not present at the time of marriage. Therefore, the ingredient of forgery is not available inasmuch as it cannot be said that the document is false. A person can be said to make a false document, in terms of Section 464 IPC, when such person makes a false document dishonestly or fraudulently, however, in the case in hand, as discussed hereinabove, admittedly it is not in dispute that the certificate was issued by the Kazi and therefore, it cannot be said to be a false document. Though marriage is disputed by the informant, it is his case that accused is mistress of the deceased. Whether such marriage can be recognized as a legal marriage, on the basis of the certificate issued, is essentially a civil dispute, which is being adjudicated in the Title Suit No. 04/2023. It cannot also

be said that an offence under Section 471 of IPC is made out, in absence of any material that the certificate is forged.

19. In view of the aforesaid, Section 420, or Section 120(B) of IPC shall also not be attracted in the case in hand. No specific averments are also made in the complaint disclosing commission of any offence under Section 420 or Section 120(B) of IPC.
20. Admittedly mutation has already been granted in favour of the petitioner by a revenue authority competent to grant such mutation, though, such order of mutation is presently under challenge in a statutory appeal and pending determination. Grant of mutation also negates the offence under Section 506 of IPC inasmuch as the criminal act relates to the possession of the disputed property. The facts also remain that there is no specific averment or any allegation of any specific criminal act, except a vague statement that due to the illegal activities of the accused No. 1 in connivance with other accused person, the complainant is under fear and panic in respect to the safety and security to his person and property, which cannot be a ground to allow the criminal proceeding against the petitioner.
21. That being the position, this Court is of the unhesitant view that the dispute between the parties is essentially of a civil nature relating to the inheritance of a property left behind by the deceased Dr. Rahman. The legality and validity of such marriage between deceased Dr. Rahman and the accused petitioner, can very well be determined in a civil proceeding. In fact, such course of action has already been opted by the informant and therefore, allowing the criminal proceeding, in the considered opinion of this Court, shall amount to an abuse of the process of the court, in the given facts of the present case. It is further clarified that the certificate issued by the Kazi may not be a valid or legal document under the Assam Moslem Marriages and Divorces Registration Act,

1935, however, when the Kazi who is authorised to issue such a certificate has admitted to have issued such certificate and such factum is not being disputed by the informant, the defect in procedure would not essentially give rise to an offence either of forgery or cheating or criminal conspiracy.

22. Accordingly, this criminal petition stands allowed by setting aside and quashing the criminal proceeding arising out of FIR dated 06.02.2023 registered as Titabar P.S. Case No. 24/2023 corresponding to G.R. Case No. 52/2023 under Sections 420/468/506/120B of IPC.
23. While parting with the record it is made clear that the observation made in this petition is for the purpose of dealing with the exercise of power under 482 so far relating to the quashment of the FIR and such observation shall not have any bearing on the merit of the civil suit pending between the parties including upon the question of validity of the marriage in question.
24. The case diary produced be returned back to the learned Additional Public Prosecutor, Assam.

JUDGE

Comparing Assistant