

GAHC010217712022



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

Case No. : Crl.Pet./1094/2022

ABDUL AZIZ TAPADAR
S/O LATE ASHAID ALI TAPADAR
R/O VILL- MOBARAKPUR, P.O. SILCHAR ROAD, P.S. AND DIST.
KARIMGANJ, ASSAM, PIN-788710

VERSUS

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

2:MOHD. AZIBUR RAHMAN CHOUDHURY
S/O LATE SOMIJ ALI CHOUDHURY
R/O VILL- KURIKALA P.O.KURIKALA
P.S. AND DIST. KARIMGANJ
ASSAM
PIN-78871

Advocate for the Petitioner : MR. S C BISWAS, MR. A UDDIN, G UDDIN

Advocate for the Respondent : PP, ASSAM, MR. T J MAHANTA (R-2), MR. A AHMED (R-2), U U KHAN (R-2), MR. S ISLAM, MR. A K TALUKDAR (R-2), S. I. KHAN

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

24-07-2024

Heard Mr. S C Biswas, learned counsel for the petitioner and Ms. S Jahan, learned Additional Public Prosecutor, Assam for the State. Also heard Mr. T J Mahanta, learned Senior counsel assisted by Mr. A K Azad, learned counsel for the respondent No. 2/complainant.

- 2.** Brief facts of the case is that the respondent No. 2 on 17.02.2022 filed a complaint petition before the Chief Judicial Magistrate (CJM), Karimganj being CR Case No. 183/2022 against the petitioner along with a sworn affidavit, stating that after obtaining necessary permission/NOC vide No. KDA/LS/NOC/297 dated 08.12.2015 from the Office of the Deputy Commissioner, Karimganj, the accused/petitioner sold 5 Jostis 9 Gonda of land with RCC building over it covered by old Dag Nos. 146 & 147 under Khatian Nos. 17 & 18 and new Dag Nos. 229 & 208 of Patta Nos. 147 & 149 under Mouza-Sabek, Alongjuri, at present within Karimganj town, to him by Registered Sale Deed No. 5240 dated 09.12.2015/10.12.2015 for sale price of Rs. 25,00,000/- and delivered the possession of said land with the RCC building over it to the complainant.
- 3.** The complainant after taking possession of the said land and RCC building took electricity service connection vide Consumer ID No. 013000013884 in his name and let out the said building to a tenant.
- 4.** The complainant stated that he obtained mutation of the said land and building in his name that he purchased from the accused and the records of rights of said land was also duly corrected in his name with proper holding number in the concerned Gaon Panchayat.
- 5.** The complainant alleged that though the accused/petitioner during the said sale process in the concerned Registered Sale Deed No. 5240 dated 09.12.2015/10.12.2015, noted above, specifically mentioned that said purchased land and the building over it are free from all encumbrances and not mortgaged with any bank/financial institutions; however, on 25.01.2022, the authorities in the Punjab National Bank, Karimganj Branch handed the Possession Notice under the SARFAESI Act in his said building premise, stating that the said land and building that he purchased, was mortgaged with the said Bank, erstwhile United Bank of India by the accused. As such only on 25.01.2022, the complainant could come to know that the accused/petitioner had cheated him while executing the Sale Deed No. dated 5240 dated 09.12.2015/10.12.2015 and committed an act of fraud and forgery upon the complainant/respondent No.2.
- 6.** In the said complaint, the complainant/respondent No. 2 also alleged that he was threatened by the accused/petitioner of causing him injury and harm to his person if he lodges any complaint against the accused and since there was marriage of his daughter on 11.02.2022, the complainant/respondent No. 2 could not lodge the complaint against the accused/petitioner earlier and only on 17.02.2022, he submitted the complaint before the learned Chief Judicial Magistrate, Karimganj praying to forward the case to the Officer-in-Charge of Karimganj Police

Station with a direction to register the case and investigate the case properly including arrest of the accused/petitioner, otherwise he shall suffer irreparably.

7. Learned CJM, Karimganj on 17.02.2022 transferred the said CR No. 183/2022 of the complainant/respondent No. 2 to the Court of the learned Sub-Divisional Judicial Magistrate (S) [SDJM(S)], Karimganj for disposal.

8. On receipt of said complaint on transfer, after hearing the complainant/respondent No. 2, and finding that the complainant prayed for forwarding the case under Section 156(3) of the Code of Criminal Procedure to the Officer-in-Charge of Karimganj Police Station for registering a case and to investigate the matter, learned SDJM (S), Karimganj by its order dated 17.02.2022 passed in said CR Case No. 183/2022 forwarded the said complaint to the Officer-in-Charge of Karimganj Police Station directing it to register a case, to investigate the same and to submit report in Final-Form.

9. On receipt of the said complaint of the complainant and pursuant to the order of learned SDJM (S), Karimganj dated 17.02.2022 passed in CR Case No. 183/2022 and considering the said complaint of the complainant as an FIR, the Officer-in-Charge of Karimganj Police Station on 22.02.2022 registered it as Karimganj Police Station Case No. 127/2022 under Sections 420/468/506 IPC corresponding to G.R. No. 425/2022.

10. Thereafter, the accused, i.e., petitioner herein filed an anticipatory bail application under Section 438 CrPC before the learned Sessions Judge, Karimganj being Bail 438 Case No. 95/2022 seeking anticipatory bail in said Karimganj PS Case No. 127/2022. On perusal of the Case Diary as well as the materials in it and finding sufficient incriminating materials against him, learned Sessions Judge, Karimganj by order dated 15.03.2022 rejected said anticipatory Bail 438 Case No. 95/2022 of the petitioner.

11. Thereafter, the petitioner preferred an anticipatory bail application under Section 438 CrPC being AB No. 839/2022 before this Court and the Court by order dated 25.04.2022 passed in said AB No. 839/2022 initially granted interim bail to the petitioner in said Karimganj PS Case No. 127/2022. However, after hearing the parties and finding sufficient materials in the Case Diary against the petitioner, the Court by order dated 30.09.2022 rejected/dismissed the said anticipatory bail application AB No. 839/2022 of the petitioner, vacating the interim pre-arrest bail granted to him earlier on 25.04.2022, noted above.

12. Thereafter, the petitioner on 28.10.2022 filed this criminal petition submitting that the order of the learned SDJM (S), Karimganj dated 17.02.2022 passed in said CR Case No. 183/2022 on the basis of the complaint lodged by the respondent No. 2/complainant against him is in violation of the provisions of the law laid down by the Hon'ble Apex Court.

13. The Court while issuing notice to the respondents in this matter, by order dated 31.10.2022 in the interim stayed the further proceedings of said Karimganj PS Case No. 127/2022, which is still in force.

14. Law is well settled that an informant is first required to approach the concerned Police Station to lodge an FIR under Section 156 CrPC. Thereafter, if no such case is registered/no such investigation is made, the informant under Section 156(2) CrPC can always approach the Superintendent of Police of the jurisdictional district concerned by making necessary representation with Registered Post stating the facts of the case before the said authority as provided under Section 156(2) CrPC. Without complying the provisions of Sections 156(1) and 156(2) CrPC, a complainant straightway cannot approach the Court under Section 156(3) CrPC praying before the Magistrate to forward the case to the Officer-in-Charge of the concerned Police Station directing to register a police case and to investigate the matter including the arrest of the accused named in the said complaint.

15. The hon'ble Apex Court in the cases of *Sakiri Vasu –Vs– State of Uttar Pradesh and Others* reported in (2008) 8 SCC 409, *Priyanka Srivastava & Another–Vs.– State of Uttar Pradesh & Others* reported in (2015) 6 SCC 287 as well as in the case of *Babu Venkatesh & Others –Vs.– State of Karnataka & Another* reported in (2022) 5 SCC 639 have dealt with the provisions of Section 156(3) CrPC.

16. A Co-Ordinate Bench of this Court in the case of *Tarun Dev Sarma & Another –Vs.– State of Assam & Others* reported in 2015 (4) GLT 413 dealt with the matter relating to Section 156(3) CrPC.

17. During the deliberation of the matter, Mr. Mahanta, learned Senior counsel appearing for the complainant/respondent No. 2 placed reliance in the judgment of the hon'ble Apex Court in the case of *Kailash Vijayvargiya –Vs.–Rajlakshmi Chaudhuri and Others (Criminal Appeal Nos. 1581, 1582 and 1583 of 2021)* decided on 04.05.2023 reported in MANU/SC/0527/2023, stating that the matter could be remanded to the Judicial Magistrate concerned for further examination.

18. In the case in hand, the complainant filed the complaint before the learned CJM on 17.02.2022 accompanied by an affidavit sworn by him and in the said complaint, the complainant/respondent No. 2 clearly mentioned that he did not lodge any criminal case under Sections 420/468/506 IPC at any police station or before any criminal Court till filing of said complaint petition.

19. Considering the law settled by the Hon'ble Apex Court and by this Court, noted above as well as the provisions of Sections 156(1) and 156(2) CrPC, this Court is of the view that the order of the learned Sub-Divisional Judicial Magistrate (S), Karimganj dated 17.02.2022 passed in CR Case No. 183/2022, directing the Officer-in-Charge of Karimganj Police Station to register the said complaint of the complainant/respondent No. 2 as an FIR and to proceed with the investigation, being illegal, cannot sustain in law and accordingly the same is set aside and quashed.

20. Since the order of the learned Sub-Divisional Judicial Magistrate (S), Karimganj dated 17.02.2022 passed in CR Case No. 183/2022, noted above, is now set aside and quashed, consequently, the Karimganj Police Station Case No. 127/2022 under Sections 420/468/506 IPC corresponding to G.R. Case No. 425/2022 registered and investigated on the basis of the said order of the learned SDJM (S), Karimganj dated 17.02.2022, are also set aside and quashed.

21. However, the complainant/respondent No. 2, if so advised, may approach the appropriate forum in accordance with law.

22. The interim order passed earlier on 31.10.2022 in the present proceeding stands merged with this order.

23. With the above observations and directions, this criminal petition is allowed to the extent above.

JUDGE

Comparing Assistant