

GAHC010222922023



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

Case No. : Crl.Pet./1073/2023

ARIJIT DASGUPTA
S/O LT. ASHISH BHUSHAN DASGUPTA
R/O SHAMBHU SAGAR ROAD,
KARIMGANJ TOWN, WARD NO. 11,
P.S. KARIMGANJ,
DIST. KARIMGANJ, ASSAM

VERSUS

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

2. SUDIPTA DAS
S/O- SAILESH RANJAN DAS
R/O- JAGANNATHI, KARIMGANJ
P.O. AND DIST. KARIMGANJ, ASSAM
PIN- 788709

Advocate for the Petitioner : MS. R CHOUDHURY, Ld. Adv.

Advocate for the Respondent : Mr. R. J. BARUAH, Ld. Addl.. P.P., (R-1),
MR. M A CHOUDHURY (R-2)

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

JUDGMENT

Date of hearing : 21.06.2024

Date of Judgment : 18.09.2024

JUDGMENT & ORDER (CAV)

Heard Ms. R. Choudhury, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State respondent No. 1 and Mr. M. A. Choudhury, learned counsel for the respondent No.2.

2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing of the Charge-sheet, vide C.S. No.261/2023 dated 30.06.2023 under Sections 120(B)/420/468/471 of IPC, arising out of Karimganj P.S. Case No. 185/2022 corresponding to G.R. Case No. 579/2022.

3. The brief facts of the case are as follows:

3.1. In late September 2020, Ashim Kumar Dey, along with Raju Ghosh and Purnendu Kumar Saha, came to the petitioner's chamber with a rough draft of an agreement for the sale of a plot of land. They requested the petitioner to make any necessary corrections. As an advocate, the petitioner made the required corrections, and the agreement for sale was registered on the same day. After the execution of the agreement, differences arose between Raju Ghosh (the buyer) and Purnendu Kumar Saha (the seller), leading Raju Ghosh to file a Title Suit (T.S. No. 21/2021) before the Court of the learned Munsiff No. II, Karimganj, seeking specific performance of the contract. The petitioner being an advocate conducted the case for Raju Ghosh. The suit was later transferred to the Court of the learned Civil Judge, Karimganj, and renumbered as Title Suit No. 42/2021.

3.2. Eventually, due to the intervention of some elderly people, the dispute was amicably settled between Raju Ghosh and Purnendu Kumar Saha, and a sale deed was executed (Sale Deed No. 1304 of 2021) on 07-10-2021 at the Sub-Registry Office, Karimganj. Subsequently, both parties filed a compromise petition in T.S. Case No. 42/2021 on 18-02-2022, which was accepted by the learned Civil Judge, Karimganj, on 02-03-2022.

3.3. Later, the petitioner learned that the No Objection Certificate (NOC) issued by the Office of the Deputy Commissioner, Karimganj (No. 251 dated 20-09-2021) in connection with the Sale Deed had been manipulated, by forging signatures of officials. In response, the Additional Deputy Commissioner ('ADC' for short), Karimganj, directed the Circle Officer to instruct Sudipta Das and Ranlal Dey, whose signatures were allegedly forged to file an FIR. However, the ADC subsequently retracted this directive on 04-03-2022. Despite this, Sudipta Das and Ranlal Dey jointly filed an FIR on 16-03-2022 before the Officer-in-Charge, Karimganj Police Station alleging *inter-alia* that an NOC vide No. 251(A) was issued from the Office of the Deputy Commissioner, Karimganj, but for issuance of the same, they had not submitted any report from the office of the Circle Office. Later on, they discovered that an unknown person had submitted a forged report on 11-11-2020. The FIR was registered as Karimganj P.S. Case No. 185/2022 under Sections 120(B)/420/468/471 IPC.

3.4. It is stated that the petitioner had performed his professional duty by drafting the Sale Deed as an advocate. However, the police threatened to arrest him in connection with the FIR dated 16-03-2022, prompting him to approach this Court. Consequently, by Order dated 28-07-2022 in AB/1630/2023, this Court granted him pre-arrest bail. After the completion of the investigation in connection with Karimganj P.S. Case No. 185/2022, the Investigating Officer ('IO' for short) submitted the Charge-Sheet being numbered as C.S. No. 261/2023 on 30-06-2023 under Sections 120(B)/420/468/471 of the IPC, including the petitioner's name along with three

others. Subsequently, the learned CJM, Karimganj, took cognizance of the charge sheet on 12-07-2023, and the case is currently at the stage of appearance.

3.5. It is further stated that there is no evidence against the petitioner; however, the IO included his name in the charge sheet mechanically and whimsically, solely to harass him. During the investigation, the IO issued a notice to the petitioner under Section 160 Cr.P.C., and the petitioner appeared before the IO, his statement was recorded, and his handwriting was collected and sent to the Forensic Science Laboratory ('FSL' for short) for examination. The FSL report, collected by the IO, indicated that the petitioner's handwriting did not match the alleged forgery. Apart from the notice under Section 160 Cr.P.C., no other notices were served to the petitioner by the IO, nor was he asked to appear after 28-07-2022. Despite this, the IO included the petitioner's name as an accused in the charge sheet, falsely alleging that all official work took place in the petitioner's chamber, which is both untrue and contrary to the records.

3.6. Moreover, from the statements recorded under Sections 161 and 164 of the Cr.P.C., none had implicated the petitioner's name in any illegal activities. The charge-sheet was submitted based on a statement made by the accused, Raju Ghosh, recorded under Section 161 Cr.P.C., which did not disclose any involvement of the petitioner in the alleged forgery. Furthermore, statements from Raju Ghosh and Ashim Dey indicate that they submitted the form for obtaining the NOC a few days after the agreement to sell the land, suggesting that the petitioner had no role in preparing the NOC.

4. In this context, Ms. Choudhury, learned counsel for the petitioner, submits that the petitioner is innocent not involved in the alleged offence. As an advocate, the petitioner merely corrected and drafted the Sale Deed provided to him by Ashim Kumar Dey. Additionally, he is not a beneficiary of the NOC, which was allegedly obtained by forging an official's signature. Therefore, the inclusion of his name in the

charge-sheet is surprising and unjustified.

5. She further submits that the petitioner's name was included in the impugned charge sheet despite any evidence against him regarding his involvement in the alleged offence. Consequently, the present petition is filed under Section 482 Cr.P.C. praying for quashing of the impugned charge sheet as it pertains to the petitioner, on the following grounds:

1. **Lack of Involvement:** The impugned charge sheet was filed in relation to the alleged forging of signatures to obtain an NOC. However, the petitioner was neither the beneficiary of the NOC nor involved in its acquisition in any manner. As an advocate, the petitioner only drafted the Sale Deed based on instructions from his client, Raju Ghosh. Therefore, the inclusion of the petitioner's name in the charge sheet is mechanical and whimsical and should be set aside and quashed with respect to the petitioner.
2. **Forensic Report:** The FSL report indicates that the petitioner's handwriting does not match the alleged forged signatures on the NOC. Thus, the charge sheet, which names the petitioner as an accused, should be set aside under Section 482 Cr.P.C. to prevent irreparable harm to the petitioner's reputation.
3. **Abuse of Process:** The inclusion of the petitioner's name in the charge sheet without any evidence constitutes an abuse of legal process. The statement of Raju Ghosh, who was the actual beneficiary of the NOC, does not implicate the petitioner in obtaining the NOC. The police, however, included the petitioner's name in the charge sheet in a mechanical and whimsical manner. Therefore, the charge sheet should be quashed concerning the petitioner.

6. Accordingly, with regard to the abuse of the legal process, she relies on the decision of the Hon'ble Supreme Court passed in the case of ***Hitesh Verma vs. The State of Uttarakhand & Anr.***, reported in ***[2020] 0 Supreme (SC) 653***. She emphasizes paragraphs 23 and 24 of the said judgment, which read as follows:-

"23. This Court in a judgment reported as *Ishwar Pratap Singh & Ors.v. State of Uttar Pradesh & Anr.*¹⁰ held that there is no prohibition under the law for quashing the charge-sheet in part. In a petition filed under Section 482 of the Code, the High Court is required to examine as to whether its intervention is required for prevention of abuse of process of law or otherwise to secure the ends of justice. The Court held as under:

"9. Having regard to the settled legal position on external interference in investigation and the specific facts of this case, we are of the view that the High Court ought to have exercised its jurisdiction under [Section 482](#) CrPC to secure the ends of justice. There is no prohibition under law for quashing a charge-sheet in part. A person may be accused of several offences under different penal statutes, as in the instant case. He could be aggrieved of prosecution only on a particular charge or charges, on any ground available to him in law. Under Section 482, all that the High Court is required to examine is whether its intervention is required for implementing orders under the [Criminal Procedure Code](#) or for prevention of abuse of process, or otherwise to secure the ends of justice. A charge-sheet filed at the dictate of somebody other than the police would amount to abuse of the process of law and hence the High Court ought to have exercised its inherent powers under Section 482 to the extent of the abuse. There is no requirement that the charge-sheet has to be quashed as a whole and not in part. Accordingly, this appeal is allowed. The supplementary report filed by the police, at the direction of the Commission, is quashed."

24. In view of the above facts, we find that the charges against the appellant under [Section 3\(1\)\(r\)](#) of the Act are not made out. Consequently, the charge-sheet to that extent is quashed. The 10 (2018) 13 SCC 612 appeal is disposed of in the above terms."

7. She further submitted that the petitioner being an advocate was only engaged to correct the draft agreement for sale that was presented to him by his client. As such, he cannot be held responsible for the allegations of forging the signatures of officials. In support of her submission, she relies on the decision rendered by Hon'ble Supreme Court in the case of ***Central Bureau of Investigation, Hyderabad vs. K. Narayana Rao***, reported in **(2012) 9 SCC 512**. She emphasized on paragraphs 30, 31, and 32 of the said judgment, which read as follows:

"30. Therefore, the liability against an opining advocate arises only when the lawyer was an active participant in a plan to defraud the Bank. In the given case, there is no evidence to prove that A-6 was abetting or aiding the original conspirators.

31. However, it is beyond doubt that a lawyer owes an "unremitting loyalty" to the interests of the client and it is the lawyer's responsibility to act in a manner that would best advance the interest of the client. Merely because his opinion may not be acceptable, he cannot be mulcted with the criminal prosecution, particularly, in the absence of tangible evidence that he associated with other conspirators. At the most, he may be liable for gross negligence or professional misconduct if it is established by acceptable evidence and cannot be charged for the offence under [Sections 420](#) and [109](#) of IPC along with other conspirators without proper and acceptable link between them. It is further made clear that if there is a link or evidence to connect him with the other conspirators for causing loss to the institution, undoubtedly, the prosecuting authorities are entitled to proceed under criminal prosecution. Such tangible materials are lacking in the case of the respondent herein.

32. In the light of the above discussion and after analysing all the materials, we are satisfied that there is no prima facie case for proceeding in respect of the charges alleged insofar as respondent herein is concerned. We agree with the conclusion of the High Court in quashing the criminal proceedings and reject the stand taken by the CBI."

8. She further relies on another decision rendered by the Hon'ble Supreme Court passed in the case of ***Suresh Kumar Goyal & Ors. vs. State of Uttar Pradesh & Anr.***, reported in ***AIR 2019 SC 535***, wherein, she emphasized on paragraph 30 of the said judgment, which read as under:-

"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under [Section 482](#) CrPC:-

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under [Section 482](#) CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

9. In support of her submission, she further relies on the decision of Hon'ble Supreme Court passed in the case of **State of Haryana & Ors. Vs. Bhajan Lal & Ors.**, reported in **1992 Supp (1) SCC 335**.

10. Ms. Choudhury, learned counsel for the petitioner has also pointed out that the FSL report shows the petitioner's signature does not match with the signature alleged to have been forged on the NOC; instead, it matches that of Mihir Kanti Chanda. According to the statements recorded under Section 161 Cr.P.C., Ashim Kumar Dey did not mention the petitioner's name or involvement in obtaining the NOC. The petitioner has been falsely implicated and charge-sheeted without any evidence or involvement in the alleged offence. Thus, continuing the trial against the petitioner not only constitutes an abuse of the legal process but also damages his reputation, which could adversely affect his professional career. He therefore prays for the quashing of the charge sheet in so far as it relates to him, to avoid prejudice.

11. In this context, Mr. R. J. Baruah, learned Additional Public Prosecutor, submitted that the FIR discloses a cognizable offence against the present petitioner. After investigation, the charge-sheet was filed alleging *inter alia* that

the petitioner and other accused persons were involved in the conspiracy to prepare the NOC by forging the signatures of some officials. He further submitted that in the charge-sheet, it is specifically mentioned that the documents were prepared in the petitioner's chamber, and that co-accused Arun Das was also given Rs. 2 lakhs to complete other official formalities. He further contended that the learned Trial Court has already taken cognizance of the matter after consideration of all the materials. Therefore, he submits that this is not a suitable case for quashing the FIR and the charge-sheet by invoking the power under Section 482 of Cr.P.C. Thus, he raised objections and submitted that the petition should be dismissed.

12. On the other hand, Mr. Choudhury, learned counsel for respondent No. 2 has submitted that from the entire case records, it is revealed that the entire official work was completed at the petitioner's residence, and that he paid Rs. 2 lakhs to one Arun Das to carry out additional official work. He also submitted that the petitioner is involved in the alleged offence of forgery, as the documents were prepared at his insistence. Accordingly, he raised objections and submitted that this is not a fit case to quash the FIR and the charge sheet against the petitioner.

13. After hearing the submissions made by the learned counsels for both sides and on perusal of the case diary and the case records, it is seen that all the relevant documents were prepared in the petitioner's residence/chamber, along with other accused persons. It is evident that the petitioner has filed this petition seeking to quash both the FIR and the charge-sheet and claims himself as an innocent, asserting that, as an advocate, he merely drafted the Sale Deed and had no role in the land transaction or in forging the NOC as alleged in the FIR.

14. Additionally, the FSL report confirms that the signature of the Circle Officer was forged by Mihir Kanti Chanda, whose signature matched the one on the questioned document. But, considering the entire circumstances of the case, it is seen that though there is no direct evidence of putting forged signature on the NOC by the present petitioner, but, from the materials, it is seen that all the documents were prepared at his instance. Thus, the case is serious in nature, involving conspiracy among all accused persons to obtain the NOC through forgery. The learned Trial Court has already taken cognizance based on the materials available in the case record and the case diary. Therefore, it cannot be conclusively stated that there is no *prima facie* case to take cognizance against the accused/petitioner.

15. The Hon'ble Supreme Court in the case of ***Bhajan Lal*** (supra), has held as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or 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 a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an

order of a magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

16. In the present case, it cannot be concluded that the FIR or the complaint fails to disclose a *prima facie* case against the accused/petitioner or that it does not constitute an offence warranting a case against the petitioner nor it is instituted with malicious intention with an ulterior motive for wreaking vengeance on the accused/petitioner due to personal grudge. Therefore, there is no basis to quash the FIR and the charge-sheet against the petitioner.

17. More so, it is view of the Hon'ble Apex Court that while exercising the power under Section 482 Cr.P.C., the Court is not required to conduct the mini trial. In this regard, a decision of ***Hon'ble Apex Court in the case of Central Bureau of Investigation Vs. Aryan Singh etc, reported in (2003) SCC online 379***, can be relied on wherein, the paragraph Nos. 9, 10, 11 & 12 of the

said judgment, reads as under:

“9. Having gone through the impugned common judgment and order passed by the High Court quashing the criminal proceedings and discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings in exercise of the limited powers under [Section 482](#) Cr.P.C. and/or in exercise of the powers under [Article 226](#) of the Constitution of India.

10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under [Section 482](#) Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under [Section 482](#) Cr.P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”.

11. One another reason pointed by the High Court is that the initiation of the criminal proceedings / proceedings is malicious. At this stage, it is required to be noted that the investigation was handed over to the CBI pursuant to the directions issued by the High Court. That thereafter, on conclusion of the investigation, the accused persons have been chargesheeted. Therefore, the High Court has erred in observing at this stage that the initiation of the criminal proceedings / proceedings is malicious. Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial. In any case, at this stage, what is required to be considered is a prima facie case and the material collected during the course of the investigation, which warranted the accused to be tried.

12. In view of the above and for the reasons stated above, when the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings and applying the law laid down by this Court in catena of decisions on exercise of the powers at the stage of discharge and/or quashing the criminal proceedings, the impugned common judgment and order passed by the High Court quashing the criminal proceedings against the accused is unsustainable and the same deserves to be quashed and set

aside.

18. Based on the above discussion, it is evident that a prima facie case is established from plain readings of the FIR, the charge-sheet, and the statements recorded under Section 161 and 164 of the Cr.P.C. Thus, this Court is of the opinion that it is not a fit case for invoking the power under Section 482 of Cr.P.C. for quashing the FIR dated 16.03.2022 as well as the Charge-Sheet being numbered as C.S. No.261/2023 dated 30.06.2023 registered under Sections 120(B)/420/468/471 of IPC, arising out of Karimganj P.S. Case No. 185/2022 corresponding to G.R. Case No. 579/2022. Thus, this criminal petition stands dismissed.

19. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant