

GAHC010009102014



2024:GAU-AS:10873

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

**Case No. : Crl.Pet./297/2014**

JAYANTA CHOUDHURY,  
S/OLT. SATYA NARYAN CHOUDHURY R/O DANISH ROAD, PAN BAZAR, P.S.  
PANBAZAR, GUWAHATI, DIST. KAMRUP M, ASSAM.

VERSUS

THE STATE OF ASSAM and ANR,  
REP. BY THROUGH THE PUBLIC PROSECUTOR, ASSAM.

2:MUSSTT. JOYBUN NAHAR  
W/O ABDUL RASHID R/O NAHAR MENSION H. NO. 19  
S.S. ROAD  
LAKHTOKIA  
GUWAHATI-1  
P.S. PAN BAZAR DIST. KAMRUP M  
ASSAM

**Advocate for the Petitioner** : MR.N N B CHOUDHURY, MR.B PADUN,MR.A  
BORGOHAIN,MR.S BORTHAKUR

**Advocate for the Respondent** : MRS.N RAHMAN, PP, ASSAM,MR.B J DUTTA,MS.A  
CHOUDHURY,ADDL PP,ASSAM

**BEFORE**  
**HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

**ORDER**

**Date : 06.11.2024**

1. Heard Mr. NNB Choudhury, learned counsel for the petitioner. Also heard Mr. B Sarma learned Addl. PP, though name of the learned counsel representing the respondent No.2 is reflected in the cause list, none appears

for them.

2. The present application under section 482 Cr.P.C is filed for quashment of Panbazar PS Case No.95/2014 under sections 384/506/34 IPC, 1860. The aforesaid FIR was lodged by Musstt. Joybun Nahar (respondent No.2 herein).

3. It is alleged in the FIR that the petitioner No.1 is a land broker and the accused No.3 is her relative and an agreement was executed for sale of a plot of land measuring 4 kathas 14 lechas belonging to the informant with accused No.2, the present petitioner. It is further alleged that the accused No.3 took signature in blank papers and on 14.03.2014, the accused No.1 called the informant in her mobile and asked her to transfer the land in favour of the accused No.2 i.e., the present petitioner and it is also alleged that the accused Nos.1 and 3 has also threatened to kidnap and molest her adopted daughter.

4. The Hon'ble Apex Court in ***Mohammad Wajid vs State of U.P.*** reported in ***2023 INSC 683*** after dealing elaborately with the power of revision so far same relates to the quashing of FIR and charge sheet has laid down the following principles.

i. It will not be just enough for the court to look into the averments made in the FIR/ complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.

ii. In frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments made.

iii. The overall circumstances leading to the initiation/ registration of the case as well as the materials collected in the course of investigation is to be looked into.

5. The power of High Court under Section 482 of Cr.P.C., to quash

complaint and criminal proceeding was summarized by the Hon'ble Apex Court in ***Indian Oil Corporation –Vs- NEPC India Limited and Others*** reported in ***2006 (6) SCC 736***. The relevant portion is quoted herein below:-

I. 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 malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

II. 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.

III. 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.

IV. 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 proceedings 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.

6. There are materials on record to suggest that an agreement for sale was executed on 18.03.2011 between one Shamsun Nahar, respondent No.2 i.e, Joybun Nahar and the petitioner herein i.e, Sri Jayanta Choudhury for sale and purchase of a plot of land measuring 4 kathas 14 lechas of land covered by Dag No.973 and 898 Old/3008 New of Patta No.282 (old)/354(new) at village No.2, Japorigog, G.S. Road, Beltola in the district of Kamrup, Assam. It is also on record that a registered irrevocable power of attorney was also issued by said Samsun Nahar and the informant/respondent No.2 Joybun Nahar, Sri Jayanta Choudhury i.e, petitioner herein for execution of the sale deed in respect of the land.

7. It is also on record that said Musstt. Shamsun Nahar and the respondent No.2 Joybun Nahar filed a Title Suit 25/2012 against one Ratan Debnath, which is relatable to the same plot of land and from the plaint it is discernible that a deed of agreement for sale was also executed in favour of the said defendant by Musstt Shamsun Nahar and the respondent No.2 Joybun Nahar in respect of the same plot of land which was also proposed to be sold to the petitioner Jayanta Narayan Choudhury @ Jayanta Choudhury on 12.10.2010.

8. Thus from the aforesaid facts pleaded in the plaint, it is clear that prior to execution of the agreement with the petitioner, another agreement was executed in respect of the same plot of land. A specific stand has been taken by the petitioner that while coming to know about such fact the petitioner herein asked the informant and her sister namely Shamsun Nahar to return the money and in the aforesaid backdrop, the FIR was lodged as a counter blast.

9. Be that as it may, from the FIR it is seen that the fundamental allegation of atrocity, threatening, cheating etc are against accused Nos.1 and

3. From the FIR it is also discernible that the accused No.2 was the beneficiary of the alleged agreement for sale. If the FIR is taken in its face value and accepted to be correct, there is no specific allegation under section 384/506/34 IPC against the present petitioner, except mentioning the phone number of the petitioner that a call was received from such phone number and the allegation are against the accused Nos.1 and 2.

10. If the FIR is read in its entirety and accepted to be correct, in the considered opinion of this court no prima case against section 384/506/34 IPC is made out against the petitioner.

11. Therefore, in the aforesaid backdrop, more particularly, when the dispute is civil in nature, the petitioner cannot not be allowed to face trial unnecessarily.

12. In view of the aforesaid, the present application stands allowed by setting aside and quashing the aforesaid Panbazar PS Case No.95/2014, so far the same relates to the present petitioner.

**JUDGE**

**Comparing Assistant**