

GAHC010023022016



2024:GAU-AS:11525

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

Case No. : Crl.Pet./631/2016

BAJRANG LAL AGARWAL and ANR.
S/O LT. MADANLAL AGARWAL, R/O TOKRIGOLA, MAKUM ROAD, P.O. and
P.S. and DIST- TINSUKIA, ASSAM

2: VIKASH AGARWAL
S/O BAJRANG LAL AGARWAL
R/O TOKRIGOLA
MAKUM ROAD
P.O. and P.S. and DIST- TINSUKIA
ASSA

VERSUS

THE STATE OF ASSAM AND ANR

2:LAKHI DUTTA DEKA
W/O LT. ACHINTYA DUTTA
R/O BALORAM DOWARAH PATH
CHIRING CHAPORI
P.S. and DIST- DIBRUGARH
ASSA

Advocate for the Petitioner : MS.C CHOUDHURY, MR.D GOGOI,MR.A M BORA

Advocate for the Respondent : MR.A K GUPTA R-2, MR.P J SAIKIA (R-2),PP, ASSAM

BEFORE
HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners : Mr. A. M. Bora, Sr. Advocate.
Ms. C. Choudhury, Advocate.

For the Respondents : Mr. P. J. Saikia, Sr. Advocate.
Mr. K. K. Das, Addl.PP.

Date of Hearing : 25.11.2024

Date of Judgement : 25.11.2024

JUDGMENT & ORDER (ORAL)

1. Heard Mr. A. M. Bora, learned Senior Counsel assisted by Ms. C. Choudhury, learned counsel for the petitioners. Also heard Mr. P. J. Saikia, learned Senior Counsel for the respondent No. 2 and Mr. K. K. Das, learned Additional Public Prosecutor for the State respondents.
2. The present petition is filed under Section 482 of the Criminal Procedure Code, 1973 for quashing of FIR dated 07.11.2015 registered as Digboi Police Station Case No. 296/15 under Sections 120(B)/406/420/34 of IPC corresponding to GR Case No. 921/2016 pending before the learned Court of Sub Divisional Judicial Magistrate, Margherita, Tinsukia.
3. The brief facts as stated and alleged in the FIR dated 07.11.2015 are recorded herein below:-
 - I. That, one agreement for sale for purchase of a land measuring 0

Bingha - 2 Kathas - 2 Lechas covered under Dag No. 224 and 222 of Periodic Patta No. 17 situated at Borbill No.1, Digboi, Mouza-Makum, District-Tinsukia, Assam was entered between one Binay Agarwal, the informant, one Smti. Putan Deka and one Sri Shyam Bihari Agarwal and advance amount of Rs. 2,00,000/- was paid. Thereafter, another amount of Rs. 2,00,000/- was paid by Shyam Bihari Agarwal and said facts were reduced into writing by executing an agreement for sale of land. It is further alleged that the said Sri Binay Agarwal and his father failed to show their willingness to pay the balance consideration and as such, sale deed could not be executed.

II. Thereafter, one Gitanjali Sonowal, Chief Counselor of Margherita, Sri Krishna Mahatoo, Gaon Burah and accused petitioner No. 1 and one Hira Devi visited the house of the informant and requested to sale the land to the accused petitioner No. 1. Said accused also informed the informant that the accused petitioner No. 1 had already talked to Sri Shyam Bihari Agarwal and it was also informed that said Shyam Bihari Agarwal had conceded the request of the accused petitioner No. 1 and handed over the original agreement for sale to him to finalize their deal. It is also conceded that deal was finalized and sale consideration was enhanced to Rs. 19,50,000/-. Later on an amount of Rs. 3,00,000/- was paid as advance by said accused petitioner No. 1 and that same will be adjusted against earlier advance paid by Shyam Bihari Agarwal by paying the same to him directly.

III. According to the informant, the remaining balance due was amount of Rs. 12,50,000/- and it was to be paid on the date of execution of the sale deed. Subsequently, it could be learnt by the informant that Shyam Bihari Agarwal had filed an objection in the Circle Office, Margherita against issuing of sale permission and they could also learn that the accused

petitioner No. 1 failed to keep his promise of making payment of Rs. 4,00,000/- to Shyam Bihari Agarwal. It is also stated that subsequently, the dispute was settled between Shyam Bihari Agarwal and accused No. 1 and lands sale permission was obtained.

- IV. As per the FIR, on 29.07.2015, accused petitioner asked the informant to remain present at his showroom at Makum Road for execution of the sale deed as he had already requested the Sub Registrar, Margherita to admit the execution on commission at the said place. Accordingly, the informant, Smt. Putan Deka, Smt. Minoti Deka Neog, Smt. Champa Deka Saikia, Sri Gautam Goswami etc. reached the said place. One Juri Gogoi Kaur, Advocate without explaining the contents of the sale deed placed the same for signature of the informant and on good faith and bonafide belief, they put their signatures in the said sale deed believing that after completion of the official formalities remaining consideration of Rs. 12,50,000/- will be paid to them.
- V. According to the informant, it was assured by the accused petitioner Bajarang Lal Agarwal and his son Vikash Agarwal that money will be handed over during the journey from Tinsukia to Dibrugarh and one cheque of Rs. 2,34,300/- was handed over during the time of execution and the money receipt was also issued. And then only the informant could learn that consideration written in the sale deed was Rs. 2,34,300/- instead of Rs. 19,50,000/-. When the informant raised their query, the accused started shouting at them and therefore, they have reason to believe that said accused Vikash Agarwal and Bajrang Lal Agarwal on collusion with the advocate with an intention to cheat them fraudulently got their signature in the sale deed and other relevant documents without making payment of balance consideration and induced them that after execution balance will

be paid.

- VI. According to them, they have been criminally intimidated by the aforesaid persons in presence of Sub Registrar, Margherita but somehow, they fled away from there to save their life and the balance consideration was not paid to them.
- VII. According to them, Vikash Agarwal and Bajarang Lal Agarwal lodged an FIR on 29.07.2015 which was registered as Tinsukia PS Case No. 954/2015 against Gautam Goswami alleging that the consideration of the land was fixed at Rs. 2,34,300/- and they have paid another amount of Rs. 65,700/- towards some expenses total amounting to Rs. 3,00,000/- and inspite of that they are demanding Rs. 3,00,000 at the time of execution of sale deed.
- VIII. It is also a contention of the informant that the Shyam Bihari Agarwal hatched a conspiracy and lodged an FIR on 10.08.2015 at Digboi, which was registered as Digboi PS Case No. 219/2015, alleging that without his knowledge and consent the sale transaction was carried on by the informant and accused Bajarang Lal Agarwal and Vikas Agarwal and tried to have forceful possession of their land but failed.
4. Mr. Bora, learned Senior Counsel appearing for the petitioners submits that the dispute is essentially civil in nature and a criminal colour has been given to it to mount pressure upon the petitioner to pay more than what it agreed between the parties. According to Mr. Bora on the face of the FIR and the admitted document such as agreement for sale and the sale deed, even if accepted to be correct no case under Section 120B/406/420/34 IPC is made out. It is further contended by Mr. Bora that mere mention of the Sections and the incorporation of language of Section is not sufficient and the informant is required to bring out the particulars of the offence committed by the accused person and the role played by the

alleged accused in committing the offence.

5. Per contra, Mr. Saikia, learned Senior Counsel for the respondent submits that this Court in exercise of power under Section 482 of Cr.P.C. should not enter into the merit of the claim as raised in the FIR and is to consider whether a reading of the FIR makes out a prima facie case when such assertion made in the FIR is taken in its face value.
6. Mr. Saikia, learned Senior Counsel for the respondent further argues that it is a clear case of cheating and criminal breach of trust inasmuch as a specific allegation is made that in the draft sale deed, the actual price of the land was disclosed, however, at the time of finalizing said draft sale deed, another amount was incorporated and the petitioner in good faith, signed the aforesaid sale deed. Therefore, it is a clear case under Section 406 of IPC as well as under Section 120B of IPC.
7. Mr. Saikia, learned Senior Counsel for the respondent further submits that as the facts disclosed make out case under Section 406/420 of IPC, the investigating authority should not be deprived of the rights to continue with the investigation inasmuch as FIR is not encyclopaedia of all the facts. Therefore, this Court should not exercise its inherent power under Section 482 of Cr.P.C., to quash this petition.
8. Mr. Saikia, learned Senior Counsel for the respondent relying on the decision of the Hon'ble Apex Court in the case of **Vijayander Kumar and Others –Vs- State of Rajasthan and Another** reported in **(2014) 3 SCC 389** argues that in the given set of facts though it may look like a civil wrong however, same shall not automatically make the FIR liable for interference in exercise of power under Section 482 of Cr.P.C., more particularly, in the given facts of the present case, when the FIR prima facie discloses an offence under Section 406 of IPC.

Therefore, Mr. Saikia, learned counsel for the respondent submits that the present criminal petition should be dismissed and the FIR should be allowed to be investigated.

9. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the material available on record including the case record.
10. The power of High Court under Section 482 of Cr.P.C., to quash the 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:-

“(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 malafides/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 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”.

11. The Hon’ble Apex Court in ***Mohammad Wajid & Anr vs. State of UP and Ors*** 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.

12. The Hon’ble Apex Court in the case of **G. Sagar Suri and Anr –Vs- State of UP and Ors** reported in **2000 2 SCC 636** went to say that while dealing with a

dispute of civil matter in exercise of power under Section 482 of Cr.P.C. for quashment, it is to be seen that whether the matter is essentially a civil in nature and has been given a cloak of criminal offence inasmuch as criminal proceedings are not a short cut of other remedies available in law. It was held by the Hon'ble Apex Court in the said case that before issuing process, a criminal court has to exercise a great deal of caution for the reason that for the accused, it is a serious matter.

13. Section 405 IPC defines the criminal breach of trust. A reading of the aforesaid provision of law, the essential ingredients of criminal breach of trust can be summarized as below:

- A. There must be an entrustment of property or dominion over it upon the accused.
- B. The accused upon whom such property is entrusted has dishonestly used or disposed of the property in violation of any provision of law which prescribed the mode in which such trust is to be discharged or of any contract made defining the discharge of such trust.

14. Section 415 IPC defines cheating. The essential ingredients of cheating are that deception of any person, fraudulent and dishonest inducement with intent to deliver any property or to have consent to retain any property and also an intention whereby an inducement is made to a person to do or omit to do anything which he would not or omit if he was so deceived.

15. The Hon'ble Apex Court in the case of ***Hriday Ranjan Prasad Verma Vs. State of Bihar and Anr.*** reported in ***2000 4 SCC 168*** clarified that there is a very fine line while making a distinction between mere breach of

contract and cheating, which is criminal one and breach of contract. Law is by now well settled that breach of contract cannot give rise to criminal prosecution of cheating until and unless the fraudulent or dishonest intention of cheating is made out in the FIR/ complaint itself.

16. Now, coming to the case in hand, the admitted position as disclosed is that agreement for sale was entered and there is no whisper that there was dishonest inducement in entering into such agreement resulting in transfer/ delivery of possession of the disputed land. It is also an admitted position that a price was negotiated, an agreement for sale was duly entered and the final conveyance deed transferring the land in term of the sale agreement was done on commission. There is no allegation as regards any fraudulent registration, or that the signature of the informant has been forged in the sale deed or that after registration such instrument was fabricated for the purpose of cheating. The basic grievance is that the price which was agreed, prior to execution of sale deed and incorporated in the draft sale deed was not incorporated in the final instrument but the fact remains that the said deed has been executed by the accused in presence of registering authorities and witnesses and the deed was duly registered. There is nothing also to suggest that there was fraudulent and dishonest inducement to deliver the property not to say any initial inducement inasmuch as it is an admitted position that the advance was paid on the basis of agreement for sale. In view of the aforesaid, no case under Section 420 of IPC is also made out.
17. From the reading of the FIR as discussed hereinabove, this court is of the considered opinion that the informant though has been able to make out a

case that there was an entrustment of property by handing over the land, however, that transfer of property was by virtue of a conveyance deed and therefore, there cannot be any question of dishonest disposal of property though there may be a civil dispute as regards validity of the sale, which can be determined by a competent civil court.

18. This court is unable to find out any statement or whisper, which shows that the accused was having an intention initially at the stage of entering into the contract to deceive the informant. Therefore, in view of the aforesaid, this court finds that no case under Section 406 or 420 IPC is made out on a bare reading of the FIR. From the material available on record no fraudulent or dishonest intention of cheating is made out in the FIR. For the aforesaid reasons, this court is also of the unhesitant view that the case of the informant may be a case of breach of contract and same cannot give rise to criminal prosecution for criminal breach of trust and cheating in absence of any ingredients of fraudulent and dishonest intention of the petitioner being made out from the FIR, more particularly for the reason that neither the agreement for sale nor the sale deed is disputed or alleged to be result of any forgery or that such deeds were not executed by the informant.
19. In view of the aforesaid and in view of the settled propositions of law as recorded hereinabove, this Court is of the view that if this criminal proceeding is allowed to be proceeded, same will be an abuse of the process inasmuch as no case under Section 120(B)/406/420/34 of IPC is made out.
20. Accordingly, this criminal petition is allowed by setting aside and quashing the FIR dated 07.11.2015 registered as Digboi Police Station Case No. 296/15 under

Sections 120(B)/406/420/34 of IPC corresponding to GR Case No. 921/2016 pending before the learned Court of Sub Divisional Judicial Magistrate, Margherita, Tinsukia. However, this order shall not preclude the informant/respondent to obtain civil remedy, if so advised and if permissible under law.

21. Accordingly criminal petition stands disposed of.

JUDGE

Comparing Assistant