

GAHC010004412012



2024:GAU-AS:11670

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

Case No. : Crl.Pet./188/2012

MAHABIR PRASAD THAKUR and ANR
SON OF SRI BHAGIRATH PRASAD THAKUR

2: BHAGIRATH PRASAD THAKUR
SON OF LATE RAM PRASAD THAKUR BOTH ARE RESIDING AT MAIN
ROAD
IN FRONT OF LIC UNDER BISWANATH CHARIALI P.S. IN THE DIST. OF
SONITPUR WITHIN THE STATE OF ASSAM

VERSUS

KESHAB PRASAD GUPTA SAHU
SON OF LATE CHANDRAMA SAHU GUPTA, R/O CHARIALI NAGAR
SHANTIPUR, WARD NO. 5, UNDER BISWANATH CHARIALI, PIN- 784176 IN
THE DISTRICT OF SONITPUR, WITHIN THE STATE OF ASSAM.

Advocate for the Petitioner : MD.A HUSSAIN, MR.K SARMA,MR.D DAS,MR.S SARMA

Advocate for the Respondent : , MR.M AHMED,MR.S RAHMAN

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

JUDGMENT & ORDER (CAV)

Date : 05-11-2024

This is an application under Section 482 read with Section 397/401 of the

Code of Criminal Procedure, 1973 (CrPC for short) with prayer for quashing the criminal proceeding of CR Case No. 105/2011 pending in the Court of learned Sub-Divisional Judicial Magistrate (M), Biswanath Chariali, Sonitpur (SDJM for short). The petitioners in this case are Mahabir Prasad Thakur and Bhagirath Prasad Thakur and the respondent is Keshab Prasad Gupta (Sahu).

2. The genesis of the case was that the respondent/complainant Sri Keshab Prasad Gupta (Sahu) filed a complaint case contending *inter-alia* that on 09.11.2010 based on an agreement, he took Rs.4,00,000/- (Rupees Four Lacs) from the petitioner No. 2 Bhagirath Prasad Thakur. Both the petitioners then took his signatures on some papers prepared by the Power of Attorney holder (petitioner No. 1) in the pretext of executing the agreement. The allegation against the petitioners is that they deceitfully procured the signature of the respondent, who was unable to read Assamese, by misleading him that the petitioners would sell/mortgage/lease or donate the land ad-measuring 1K 1L appertaining to Dag No. 189 of KP Patta No. 137 of Part V, Chariali Nagar. However, the petitioners cheated the respondents and got the Deed registered on 23.03.2011 showing that the land would be donated to the petitioner No. 2. Through the deceitfully procured Power of Attorney, the petitioners cheated the complainant. The complainant had to obtain a loan of Rs.3,00,000/- (Rupees Three Lacs) from the Assam Gramin Bikash bank at Biswanath Chariali Branch. The complaint petition was registered as CR Case No. 105/2011.

3. The learned SDJM examined the witnesses under Section 200 of CrPC and took cognizance of offence under Sections 420/34 of the Indian Penal Code, 1860 (IPC for short) and issued summonses to the petitioners. Annexure-1 and 2 are the complaint petition and the order dated 16.12.2011.

4. It is further submitted that the petitioners could not appear on the date

fixed as 28.02.2012 due to a 'bandh call' and the next date fixed was on 22.03.2012. It is further submitted that as there is no criminal liability against the petitioners, the petitioners have preferred this application before this Court. The complainant/respondent himself had executed a Special Power of Attorney No. 1203/312 on 09.11.2010 in favour of petitioner No. 1 before the Sub-Registrar, Biswanath Chariali in presence of the witnesses empowering the petitioner No. 1 to sell/mortgage/ease/gift the land as described in the schedule of the complaint. On the strength of the Power of Attorney, petitioner No. 1 had executed a Sale Deed on 22.06.2011 being Sale Deed No. 518/307 in favour of Smt. Kalawati Devi, wife of the petitioner No. 2 and handed over the possession of the land with full knowledge and consent of the complainant for consideration of Rs.1,16,000/- (Rupees One Lac Sixteen Thousand) which was also paid to the complainant.

5. The fact of the matter is that the complainant took a loan of Rs.4,00,000/- (Rupees Four Lacs) from the petitioner No. 2, who is the father of petitioner No. 1. The complainant/respondent empowered the petitioner No. 1 by the Power of Attorney to execute the Sale Deed in the name of Smt. Kalawati Devi. It is alleged by the petitioners that the aforementioned land was already mortgaged in favour of Assam Gramin Bikash bank and the complainant/respondent himself is involved in cheating and has defrauded the petitioners as well as the bank.

6. It is further submitted that Annexure-5 i.e. the Power of Attorney is a registered document executed by the respondent and he has affixed his signature and thumb impression in presence of Sub-Registrar, Biswanath Chariali and in presence of witnesses. This negates the complainant's allegation that his signatures were obtained in blank papers by the petitioners. It is submitted that the complainant's remedy lies in a Civil Court and not through a false criminal

proceeding. Thus, this is an abuse of the process of the Court and there is no bar to invoke the inherent jurisdiction under Section 482 of Code of Criminal Procedure, 1973 and quash the proceeding brought up against the petitioners.

7. Heard learned counsel Mr. K. Sarma for the petitioners and learned counsel Mr. S. Rahman for the respondent.

8. It is submitted on behalf of the petitioners that the respondent has approached a wrong forum and has brought up a false case against the petitioners. The respondent/complainant's remedy lies in the Civil Court.

9. On the contrary, learned counsel for the respondent laid stress in his argument that it has been falsely submitted by the petitioners that the land described in the complaint petition has been mortgaged to the Assam Gramin Bikash Bank. No action has been taken against the respondent by the bank. The petitioners have misled the respondent as the respondent is unable to read and write Assamese. It is alleged that instead of executing any document for sale, or gift of land by the respondent, the document (Power of Attorney) was misused by the petitioners to fraudulently transfer the respondent's land to the petitioners' benefit. The petitioner No. 1 transferred the aforementioned land to his mother with the aid of the Power of Attorney. It has to be borne in mind that there is no allegation in the complaint of procuring signatures on blank papers. It is alleged by the complainant/respondent that a Power of Attorney was fraudulently prepared by misleading that an agreement has been prepared as Rs.4,00,000/- (Rupees Four Lacs) was borrowed by the complainant/respondent.

10. I have considered the submissions at the bar with circumspection. I have also scrutinized the documents annexed along with the petition. Annexure-5 is

the Power of Attorney executed by Keshab Prasad Gupta, authorizing Mahabir Prasad, S/O Sri Bhagirath Prasad/petitioner No. 1 as the lawful attorney to sell the aforementioned land by executing a Sale Deed, mortgage on lease, gift etc. the aforementioned land which is described in the schedule of the petition.

11. It is true that the Power of Attorney was in Assamese. Annexure-6 is the Sale Deed. Smt. Kalawati Devi is the mother of the petitioner No. 1 and wife of the petitioner No. 2. The Sale Deed was executed between Smti. Kalavati Devi and the petitioner No. 1 i.e. the son of petitioner No. 2. It has been mentioned in the Sale Deed i.e. Annexure-6 that the land is free from all encumbrances. It is apparent from Annexure-6 that the owner of the land is Sri Keshab Prasad Gupta i.e. the respondent or the complainant of this case. The Sale Deed was executed between the mother and son for a consideration of Rs.1,16,000/- (Rupees One Lac Sixteen Thousand). The mother Smt. Kalawati Devi has purchased the land from her son Sri Mahabir Prasad, S/O Sri Bhagirath Prasad, residing in the same village and house as that of Smti Kalawati Devi, who is the wife of Sri Bhagirath Prasad. It has been mentioned in the Sale Deed that as the second party i.e. the Attorney Holder Sri Mahabir Prasad was suffering from financial constraints, he sold the land belonging to Sri Keshab Prasad Gupta to his mother.

12. On the contrary, it has been admitted by the complainant Sri Keshab Prasad Gupta that he has borrowed Rs.4,00,000/- (Rupees Four Lacs) from the petitioners. The petitioners have not disputed that the complainant borrowed Rs.4,00,000/- (Rupees Four Lacs) from them. The Sale Deed and the statements of the petitioners are contradictory. It is not necessary for this Court to delve into the matter and deal with the merits of the case, but at the same time it is apparent on the face of the record that contradictory statements have

been made by the petitioners through this petition *vis-à-vis* the Sale Deed. It would be apt to reiterate that the Power of Attorney was executed by the complainant/respondent in favour of the petitioner No. 1 to deal with the aforementioned land and the petitioner No. 1 sold the aforementioned land to his mother and thereafter, took possession of the same. The respondent has admitted that he had taken loan. It is not clear if the loan was taken and the aforementioned land was mortgaged in lieu of the loan. No specific allegation has been made against the respondent relating to transfer of any encumbered land. On the contrary, the Annexure-6, heavily relied upon by the petitioners reveal that the land was free from encumbrances. The petitioners have to refute that they have acted in a surreptitious manner. It appears that the respondent may not have knowledge of the Assamese language and script.

13. I have also scrutinized the Trial Court Record. After going through the statements of the witnesses and the complainant, summonses were issued by the learned SDJM against the petitioners after taking cognizance of offence under Section 420/34 of IPC. At this stage, it is not clear to this Court whether the land has been mortgaged by the complainant/respondent. The matter has been stayed by this Court and the proceedingshave been stalled since 05.04.2012. It cannot be conclusively decided at this stage that no offence under Sections 420/34 of IPC lies against the petitioners. A scrutiny of the Trial Court Record reveals that the learned SDJM has not erred while taking cognizance under Sections 420/34 of IPC. The provision under Section 482 of CrPC is to be exercised sparingly. Although much water has flowed under the bridge,at this stage, this Court is hesitant to invoke the jurisdiction under Section 482 of CrPC. Therefore, petition is dismissed. However, the petitioners are at liberty to raise the issue of maintainability of the criminal proceedings

during the stage of hearing of charges or at any other stage.

14. No order as to costs.
15. Send back the Trial Court Record.

JUDGE

Comparing Assistant