

GAHC010052552023



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

**Case No. : Crl.Pet./237/2023**

BIKASH BUCHA  
S/O SRI BACHHRAJ BUCHA  
R/O FLAT NO. T-5C, PROTECH PARK,  
HENGRABARI, P.S. DISPUR, GUWAHATI, DIST. KAMRUP (M),  
PIN-781036, ASSAM

VERSUS

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

2:SRI PRAMOD BORA  
S/O LATE BIREN CHANDRA BORA  
R/O BAR PATHARI SUTERGAON  
P.O. PATHARI

P.S. NAGAON SADAR  
DIST. NAGAON  
ASSA

**Advocate for the Petitioner : PETITIONER IN PERSON**

**Advocate for the Respondent : Mr. K. K. Das, Addl. PP, ASSAM**

**BEFORE  
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

Date of hearing : 21.02.2024

Date of Judgment : 20.03.2024

**JUDGMENT & ORDER (CAV)**

Heard Mr. B. Bucha, the petitioner in person. Also heard Mr. K. K. Das, learned Additional Public Prosecutor for the State respondent.

**2.** This is an application filed under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing of the impugned FIR dated 05.08.2021 registered as Paltan Bazar P. S. Case No. 710/2021, under Sections 406/420 of IPC and its subsequent proceedings.

**3.** The brief fact of the case is that;

**3.1.** On 28.05.2021, the informant/respondent No.2 namely Sri Pramod Bora lodged an FIR against the accused/petitioner before the Officer-In-Charge of Nagaon Sadar Police Station, Nagaon, Assam alleging *inter alia* that the informant had entered into a registered agreement for sale being Registered Deed No.6861/2011 dated 02.08.2011 with M/S Asheerbad Construction Company Pvt. Ltd. having its office at Maligaon, Guwahati represented by one of its' Director Sri Rabindra Nath Sharma, son of Lt. Pitambar Sharma for purchase of residential 3 BHK Flat No.4-A on Fourth Floor, Dwarka Enclave, Maligaon. It is stated that from the very day of booking the Flat, the accused/petitioner, who introduced the informant as Co-Developer of the project was looking after all the matter relating to payment and execution of documents etc. from the informant's side and all the transactions were done through the

accused/petitioner. It is further stated that the informant had paid a substantial amount towards consideration of the Flat to the aforesaid Developer/Builder at the time of registration of the agreement and on subsequent dates.

**3.2.** It is further stated that after payment of substantial amount to the Developer/Builder through the accused/petitioner, the informant had decided to execute the final Sale Deed to be done in his favour and asked the accused/petitioner to receive the balance amount on one single installment for execution of the final sale deed. But, the accused/petitioner informed the informant that due to pendency of a writ petition before the Gauhati High Court; all the deeds regarding the settlement of land etc. are being stayed by the said Court. Thereafter, the informant also tried to enquire about the present status of the pending writ petition, but, the accused/petitioner tried to avoid the quarries on various occasion.

**3.3.** Further, on 07.04.2021, the informant received a letter from Sri Rabindra Nath Sharma, one of the Director of the Developer/Builder of the company, who stated that the money has already been refunded to the informant as the accused/petitioner had informed the company that the present informant does not want to purchase the flat and he wants to refund back the amount paid by the informant. On the basis of the said information, the Developer/Builder had refunded the amount paid by the informant towards the purchase of flat to the accused/petitioner on installment from the month of January, 2015 to December, 2015.

**3.4.** But, it has been alleged by the informant that he never instructed the accused/petitioner to cancel the proposal of purchasing flats nor he wanted any refund of money. Rather, he wanted to execute the sale Deed in his favour and

proposed for execution of final sale deed. Thereafter, only, the informant came to know that the accused/petitioner had withdrawn the entire refundable amount payable to the informant and the accused/petitioner never paid any amount to the informant till the date of lodging of FIR. Subsequently, the informant came to know that the flat which was booked by him was sold to a third party long back.

**3.5.** It is further stated that the informant tried to contact with the accused/petitioner in this regard but could not contacted. Later on, the informant came to know that the accused/petitioner had also cheated one Sri Munindra Saikia (one purchaser of flat in Dwarka Enclave), in the same manner and had sold his flat without the knowledge of the aforesaid person. Thus, it has been alleged that the accused/petitioner had intentionally and willfully cheated the informant and without any authority from informant had falsely represented the informant and not only cancelled his flat but also withdrawn the entire amount paid by the informant for purchase of the flat.

**3.6.** Accordingly, upon received of the FIR, on 28.05.2021, the officer-in-charge, Nagaon Sadar Police Station, Nagaon had registered a case as Nagaon Sadar P. S. Case No.1102/2021 under Sections 406/420 of IPC. But subsequently, on the basis of the prayer made by the I.O, vide order dated 19.06.2021, the learned Chief Judicial Magistrate, Nagaon was pleased to transfer the Nagaon Sadar P. S. Case No.1102/2021 to the Officer-in-Charge, Paltan Bazar Police Station, Guwahati as the place and date of occurrence falls under Paltan Bazar Police Station. Accordingly, on 05.08.2021, the Officer-In-Charge, Paltan Bazar, Guwahati upon receipt of the FIR being Nagaon Sadar P. S. Case No.1102/2021, registered the same as Paltan Bazar P. S. Case No.

710/2021 under Sections 406/420 of IPC.

**4.** Mr. Bucha, the petitioner in person has submitted that respondent No.2/informant has falsely implicated his name in the present FIR. He is no way connected in the alleged offence as stated in the FIR. The actual fact leading to the present case is that; on 19.07.2019, the accused/petitioner along with one Shri Hemanta Deori informed the Income Tax Department by way of a complaint about benami investment of Dr. Durlav Chamua, Ex-MLA, Nagaon District in the name of the respondent No.2/informant (beneficial owner of benami property) for investment in Flat No.4A, Dwarka Enclave, Maligaon and also similar complaints were also filed for Flat No. 6C and 6G, Dwarka Enclave, Maligaon, Guwahati where investments were made in the name of one Sri Munindra Saikia. Thereafter, Investigating Officer of Income Tax Department had informed that the respondent No.2/informant had submitted one notarized cancellation deed of Flat No.4A, Dwarka Enclave, Maligaon. As per the cancellation deed the sum of Rs.2,00,000/- (Rupees Two lakhs) only was returned to the respondent No.2/informant by M/S Asheebad Construction Company Pvt. Ltd. At present, the cancellation deed of Flat No.4A is in the possession of Income Tax Department.

**5.** He also submits that the present FIR has been lodged only as the counter blast of the complaint dated 19.07.2019 lodged by the accused/petitioner before the Income Tax Department against the respondent No.2/informant. In connection with the present case, the I.O on 18.01.2022 also made an enquiry of the accused/petitioner over telephone and on 22.01.2022, he submitted a written reply specifically stating that the respondent No.2/informant as brother-in-law of Dr. Durlav Chamua and he also met the informant personally in the

house of Dr. Durlav Chamua.

**6.** The petitioner in person, Mr. Bucha further submits that he had never been in any financial transaction with the respondent No.2/informant nor he had taken any money from the informant nor he had given any money to him at any point of time. He further submits that he knows the M/S Asheerwad Construction Company Pvt. Ltd. and its Director namely Smti. Ratna Sarma and Lt. Rabindra Nath Sarma, as he had earlier, supplied the construction material for their project Dwarka Enclave at Maligaon. In regard to the complaint made by the accused/petitioner before the Income Tax Department, he used to communicate with the commissioner of Police, Guwahati, the Officer-In-Charge, Paltan Bazar Police Station as well as Chairman, State Police Accountability Commission, Assam for proper investigation. But, till date no action has been taken by the authority concerned against the respondent No.2/informant. In this respect, the accused/petitioner also issued reminder to the authority concerned, but till date nothing has happened.

**7.** He submits that, the respondent No.2/informant in the entire FIR nowhere mentioned about the date and amount of rupees he had paid to the accused/petitioner in the name of purchasing of flat at Dwarka Enclave, Maligaon at any point of time. Thus, the FIR itself reveals that the said FIR is an absurd one, which is not tenable in the eye of law. Further, he also submits that before lodging of the FIR by the respondent No.2/informant before the Officer-in-charge of Nagaon Sadar police Station, Nagaon, one person namely Munindra Saikia lodged a totally identical FIR against the present accused/petitioner before the Officer-In-Charge of Pan Bazar Police Station being Panbazar P. S. Case No.288/2021 under Sections 120B/420/406/468 of IPC with the same

allegations as narrated by the respondent No.2/informant. Thus, the FIRs lodged by the respondent No.2/informant on 28.05.2021 and Munindra Saikia on 26.05.2021 are totally identical. But, only to harass the accused/petitioner, both the FIRs have been registered in two different places.

**8.** The petitioner in person also submits that, after investigation the I.O concerned of Panbazar P. S. Case No.288/2021, had submitted final report being Final Report No.166/2022 dated 21.05.2022 before the learned Chief Judicial Magistrate, Kamrup (M), Guwahati. In the final report, the I.O concerned has stated that due to lack of evidence against the accused/petitioner, final report being Final Report No.166/2022 has been submitted. But, till date in the present case, no report has been submitted by the Paltan Bazar Police. He also submits that regarding the same allegations, two different FIRs were lodged in two different police stations and in one case, Police has submitted a Final Report. Thus, there is no probability of furnishing Charge-Sheet against the accused/petitioner in the present case. Further, it is seen that the present case has been registered under Sections 406/420 of IPC which is not applicable, so far as the present petition is concerned and both the sections are also contradictory to each other.

**9.** He further submits that the allegations brought in the FIR are so absurd and inherently improbable, that, on the basis of which no prudent person can ever reach a just conclusion as well as the said FIR is manifestly attended with *mala fide* and with an ulterior motive for wreaking vengeance and as such the same is liable to be set aside and quashed. Accordingly, he submits that it is a fit case, wherein, the power under Section 482 of Cr.P.C. can be invoked to quash the present FIR which is being registered as Paltan Bazar P. S. Case No.

710/2021, under Sections 406/420 of IPC.

**10.** Mr. Bucha, the petitioner in person further submits that the FIR filed by the Munindra Saikia in Panbazar P.S. Case No.288/2021, the I.O already submitted a final report, though, the allegation leveled against the accused/petitioner is identical to the FIR filed the present respondent No.2/informant, but, here in the instant case, no report has been submitted by the Paltan Bazar Police till date. Thus, considering the entire aspect of the situation under which the FIR has been lodged, it is seen that the informant had lodged the FIR only as counter blast of the complaint filed by the petitioner before the Income Tax Department on 19.01.2022. Thus, there is no prima facie material against the accused/petitioner to make out any case against him and hence, it is a fit case, wherein, the power under Section 482 of Cr. P. C. can be invoked to quash the FIR registered as Paltan Bazar P. S. Case No.710/2021.

**11.** In this context, Mr. Das, the learned Additional Public Prosecutor has submitted that there is sufficient material in the FIR itself as well as in the Case Diary to constitute a prima facie case against the accused/petitioner. Further, the case is at the stage of investigation and till date, the money has not yet been returned to the informant which is alleged to have been taken by the accused/petitioner from the builder with a view to return the same to the informant. Further, he submits that the case of Panbazar P.S. Case No. 288/2021 may ended with the Final Report., but, the material available in the present case constitute a prima facie case against the present petitioner. Accordingly, the learned Additional Public Prosecutor has raised objection that the case is still at the stage of investigation and the I.O is still investigating the matter and material evidence is yet to be collected in the present case and hence, it is not

at all a fit case wherein, the FIR can be quashed exercising the power under Section 482 of Cr. P. C.

**12.** After hearing the submissions made by the learned counsels of both side, I have perused the case record as well as the scanned copy of the Case Diary. It is the case of the petitioner that he lodged a complaint before the Income Tax Department in regards to benami transaction or property purchased by Dr. Durlav Chamua in the name of the present respondent No.2/informant as well as in the name of other informant named as Munindra Saikia. But, investigating officer in Jalukbari P. S. Case No. 341/2023, registered under Section 420 of IPC had intentionally avoided to investigate the matter in proper way in spite of the fact that he produced several documents and also given his statement in connection with the said case. As per the petitioner, it is the counter blast of the said complaint filed by him before the Income Tax Department regarding the benami transaction and purchase of property by one Dr. Durlav Chamua, only with a view to harass the present accused/petitioner who is not all involved in the alleged offence.

**13.** But, from the statement made in the FIR as well as from the materials collected by the I.O, it cannot be said that there is no *prima facie* case against the accused/petitioner to investigate the case or to proceed with the case further. Though, it is the case of the petitioner that the present FIR has been lodged by the informant/respondent No.2 only to harass the petitioner as he lodged a complaint before the Income Tax Department against one Dr. Durlav Chamua who purchased the property in the name of the informant, but, there is no material collected by the I.O that the case has been filed only with a *malafide* intention or with ulterior motive for wrecking the vengeance on the

accused for his personal grudge.

**14.** The Hon'ble Supreme Court in the case of **State of Haryana & Ors. Vs. Bhajan Lal & Ors.**, reported in **1992 Supp (1) SCC 335**, 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.”*

**15.** 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.*

**16.** So, from the discussion made above, it is seen that a *prima facie* case is found to be established even from plain reading of the statement made in the F.I.R. More so, there is no material to hold that F.I.R. is lodged only with a *malafide* intention only to harm the petitioner or with an ulterior motive for wreaking vengeance on the accused/petitioner.

**17.** In view of above, 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 which has been registered as Paltan Bazar P. S. Case No. 710/2021 under Sections 406/420 of IPC. Thus, this criminal petition stands dismissed.

**18.** In terms of above, this criminal petition stands disposed of. No order as to costs.

**JUDGE**

**Comparing Assistant**