

(2008) 04 GAU CK 0014

In the Gauhati High Court

Case No : Criminal Revision Petition No. 75 of 2008

Babul Deb

APPELLANT

Vs

State of Assam and anr.

RESPONDENT

Date of Decision : 07-04-2008

Acts Referred:

Criminal Procedure Code, 1973 — Section 482

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2008) 4 GLR 49

Hon'ble Judges : I.A.Ansari, J

Bench : Single Bench

Advocate : B.R.Dey, B.S.Singh, B.Sarkar, J.Roy, P.Sen, R.Dhar, Advocates
appearing for Parties

Judgement

1. Heard Mr. B.R. Dey, learned senior counsel, appearing on behalf of the accusedpetitioner, and Mr. B.S. Sinha, learned Additional Public Prosecutor, Assam.

2. By making this application under section 482, Cr.PC., the petitioner, who is accused in Fatashil Ambari Police Station Case No. 52/2008 under sections 468/420, IPC, has sought for quashing the First Information Report, which has given rise to the case aforementioned.

3. The principle contention of Mr. Dey is that the FIR, in question, discloses civil litigation and the informantopposite party No. 2 herein has wrongly taken recourse to police action by lodging an FIR and the police have also acted illegally in registering a criminal case, commencing the investigation and arresting the petitioner. In support of his submission that a civil action cannot be made basis for launching a criminal prosecution, Mr, Dey relies on Ram Biraji Devi & Anr. v. Umesh Kumar Singh & Anr., AIR 2006 SC 2035, M/s. Indian Oil Corporation v. M/s. NEPC India Ltd. & Ors. AIR 2006 SC 2780, Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Others AIR 1983 SC 67, and Hari Prasad Chamaria v. Bishun Kumar Surekha and Others, AIR 1974 SC 301.

4. As a proposition of law, there can be no dispute that a criminal prosecution cannot be launched for securing a relief, which is obtainable by instituting civil action, by camouflaging such a civil action as a criminal action. The question, however, is as to whether, in the case at hand, the FIR, in question, discloses commission of a cognizable offence. If the contents of the FIR, even when assumed to be true, do not make out commission of any cognizable offence, the FIR would have to be quashed. On the contrary, if the contents of the FIR disclose commission of a cognizable offence, the mere fact that the accusations made against the person, in the FIR, may give rise to a civil action too, it will not take away the power of the police to investigate the case, which, the FIR discloses. Moreover, the question as to whether the contents of the FIR are true or not is a question, which is to be determined by investigation, and the court cannot quash an FIR by relying upon such documents on which may rest the defence of the accused.

5. Bearing in mind the broad parameters of the High Court's power to quash the FIR by invoking its jurisdiction under section 482, Cr.PC, when I turn to the FIR, I find that the FIR reads as under :

".....With due respect, I would like to state that I am a resident, of Lalganesh and maintaining my livelihood by doing small business. One Sri Babul Deb son of Late Harimohan Deb resident of Progati Path Udalbakra made an agreement on 22.3.2004 stating himself to be the owner of land and took Rs. 1,50,000 from me by cash. Thereafter a few months he took in total Rs. 3,32,500 for making registered sale deed and he executed a sale deed. In the deed was signed by Smt. Tara Devi Khetawat as owner. And periodic Patta No. 58 Dag No. 52 of village Udalbakra, MouzaBeltola was mentioned and sale of Katha of land was shown, but Sir, some doubt arise in my mind due to the fact that my agreement was in the year 2004 and thereafter sale deed was shown on 18.2.2003 and on asking to him he admitted that the Sale deed is fake one.

Said person by playing fraud sold the land of another owner stating himself as the owner and thereby cheated me and taken Rs. 3,32,500 and misappropriate for his own use. That Sir, I requested him many times and instead of return the money he threatened me and told that if I disturb him he may kill me."

6. From the contents of the FIR, it becomes clear that the informant has suspicion that the land sold to him by the accused, named in the FIR, is not of the accused, but of Smt. Tara Devi Khetawat. At this stage, such suspicion cannot be said to be unfounded. Whether or not the land, which the accused petitioner has sold to the informant, actually belonged to the accusedpetitioner or not is a question of fact, which can be determined by investigation. Merely because of the fact that an FIR expresses suspicion of a particular criminal act having been done, such an FIR cannot be quashed. For instance, when a person's daughter dies, while living in her matrimonial house, such a person may inform the police that he has suspicion that his daughter's death is not natural, but homicidal. Merely because of the fact that the informant, in such a

case, expresses his suspicion and does not know what the truth is, the High Court cannot take resort to section 482, Cr.PC and quash such an FIR. Same is the case at hand. The informant does not really know as to whether the land, which he has purchased from the accused, does or does not belong to the accused, for, he suspects that since the deed had been signed by Smt. Tara Devi Khetawat, the land did not belong to the accused. It is, now, for the police to investigate the case and determine the truth. The mere fact that the accused has been arrested cannot be made a ground for quashing the FIR, for, it was for the Investigating Agency to determine if arrest of the accused is necessary for effective investigation of a given case.

7. Because of what has been discussed and pointed out above, I do not find that the petitioner has been able to make out any case for quashing the FIR.

8. Before parting with this petition, it is necessary to point out that the nature of the FIR, in question, demands expeditious investigation so as to unearth the truth. The Investigating Agency shall, therefore, conduct the investigation expeditiously.

9. This revision, thus, fails and the same shall accordingly stand dismissed.