

(2022) 10 GAU CK 0014
In the Gauhati High Court
Case No : Criminal Petition No. 132 Of 2018

Barun Gogoi And 2 Ors.

APPELLANT

Vs

Gunin Buragohain And Anr

RESPONDENT

Date of Decision : 21-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 20(3)
Code Of Criminal Procedure, 1973 — Section 294, 294(1), 316, 482
Indian Penal Code, 1860 — Section 34, 120B, 420, 468, 471
Evidence Act, 1872 — Section 3, 33, 74, 76

Citation : (2022) 10 GAU CK 0014

Hon'ble Judges : Robin Phukan, J

Bench : Single Bench

Advocate : G P Bhowmik, A K Gupta

Final Decision : Allowed

Judgement

1. Heard Mr. D. Kalita, learned counsel for the petitioner and also heard Mr. A.K. Gupta, learned counsel for the respondent No.1 and Mr. K.K. Parasar, learned Addl. P.P. for the respondent No.2

2. This petition, under Sections 482 of the Code of Criminal Procedure, is directed against the order dated 12.06.2017, passed by the learned Judicial Magistrate, 1st Class, Tinsukia, in Complaint Case No. 39/2016, and also against the Judgment and order dated 01.12.2017, passed by the learned Sessions Judge, Tinsukia, in Criminal Revision Petition No. 40(2)/2017. It is to be mentioned here that the learned Judicial Magistrate 1st Class, Tinsukia, vide impugned order, dated 12.06.2017, has allowed the petition No.3036/2016 filed under section 294 of the Code of Criminal procedure, and directed the petitioners to admit or deny genuineness of certain documents, in C.R. Case No. 39/2016, and vide impugned judgment and order in Criminal Revision Petition No. 40(2)/2017 the learned Sessions Judge, Tinsukia has upheld the said order of the learned Judicial Magistrate, 1st Class, Tinsukia.

3. The factual background, leading to filing of the present petition, is briefly stated as under:

"The respondent No1-Shri Gunin Buragohain, as plaintiff had instituted a Title Suit, No.58/2014, against the petitioner No.1 and 2 as defendants, in the court of learned Civil Judge, Tinsukia for a decree of declaration of right title and interest over a plot of land measuring 03 bighas, covered by Dag No. 204(Part) of P.P. No.84 situated at Morankari Gaon, Mouza- Gharbandi, Tinsukia and the said suit is pending at the stage of evidence. In the said suit, petitioner No.1 and 2 had filed written statement on 31.03.2014, denying the averments made by the plaintiff in his plaint, and also filed counter claim over the suit land by right of adverse possession, having been possessed the same for 35 years. They also enclosed one legal notice dated 15.03.1985, purportedly issued by Advocate K. Agarwal of Tinsukia, addressed to the petitioner No.3, who is not a party to the said Title Suit. In the said legal notice, dated 15.03.1985, it is stated that the petitioner No.3 has been occupying about 3 bighas of land by cultivating the same, out of 6B-1K-6Ls, covered by dag No. 203 and 204 of P.P. No.84, situated at Morankari Gaon, belonging to Smti. Budhiya Sonar and Shri Munna Sonar. Thereafter the respondent had filed one C.R. Case No. 39/2016, dated 27.10.2016, against the petitioners alleging that a manipulated legal notice dated 15.03.1985, allegedly issued by Advocate K. Agarwal was annexed with their written statement in Title Suit No. 58/2014, claiming their right of adverse possession, over the suit land and one seven digit phone number, i.e. 2338618, of Advocate K. Agarwal appeared there but, seven digit phone number in Tinsukia District started from October, 2002. Upon the said complaint the learned Judicial Magistrate 1st Class took cognizance under section 120(B)/420/468/471/34 IPC and issued process to the petitioners.

Accordingly, the petitioners entered appearance and contested the case. Thereafter, on 27.10.2016, at the time of evidence before the charge, the respondent had filed one petition No. 3036/16, under section 294 of Cr.P.C., for passing an order calling upon the petitioners to admit or deny the genuineness of certain documents. The petitioners had filed written objection against the petition. Thereafter, hearing learned Advocates of both sides; the learned Judicial Magistrate 1st Class, had allowed the petition. Being highly aggrieved by the said order of learned Judicial Magistrate 1st Class, the petitioners have filed one Criminal Revision Petition No. 40(2)/2017, before the court of learned Sessions Judge, Tinsukia, but, the same came to be dismissed on the ground that section 294 is a statutory provision and the parties have no right to object and that the impugned order is an interlocutory order as right of the parties have not been finally decided."

4. Being highly aggrieved, the petitioners have preferred this present petition, under section 482 Cr.P.C. and contended to set aside the impugned judgments and orders on the following grounds:-

(i) That, the impugned order dated 12.06.2017, passed by the learned Judicial

Magistrate 1st Class; Tinsukia is not maintainable in law as well as in facts;

(ii) That, the learned Judicial Magistrate 1st Class, Tinsukia, had overlooked the spirit of section 294 Cr.P.C.;

(iii) That, the learned Judicial Magistrate 1st Class, Tinsukia had ignored the provision of Article 20(3) of the Constitution of India, wherein it is provided that no accused can be compelled to become a witness in a proceeding against him;

(iv) That, the petitioners cannot be compelled to deny or admit genuineness of the record of C.R. Case No. 173/2003 containing deposition of BSNL Officials, Tinsukia and Certificate issued by BSNL Office in connection with seven digit phone numbers, since it was a separate proceeding between two different parties and also there is bar of Section 33 of the Indian Evidence Act;

(v) That, the petitioner No.3 is not a party to the Title Suit No.58/2014, and as such he cannot be called upon to admit or deny genuineness of the plaint, written statement and legal notice dated 15.03.1985;

(vii) That, the learned court below had ignored section 316 Cr.P.C. which is counter to section 294, and that Section 294 Cr.P.C. is applicable to private document only and it is not applicable to public document;

5. Mr. D. Kalita, learned counsel for the petitioners, besides reiterating the points raised in the petition, also submits that the learned court below had ignored the spirit of section 294 Cr.P.C. and that it is not applicable in case of public document. In support of his submission Mr. Kalita has referred one case law of Andhra Pradesh High Court in Md. Akbor and Another vs. State of U.P., reported in 2002 CRI.L.J.3167. Mr. Kalita further submits that Article 20(3) of the Constitution of India prohibits compelling of an accused to become a witness in a proceeding against him and that petitioner No. 3 is not a party to the Civil Suit No.58/2014 and as such he cannot be called upon to admit or deny genuineness of the plaint, written statement and legal notice, dated 15.03.1985; and that the petitioners cannot be compelled to deny or admit genuineness of the record of C.R. Case No. 173/2003, to which the petitioners were not a party. Therefore, it is contended to set aside the impugned order. Mr. Kalita also referred another case law Shamsheer Singh Verma vs. State of Haryana, reported in (2016) 15 SCC 485, in support of his submission.

6. On the other hand, Mr. A.K. Gupta, learned counsel for the respondent No.1 submits that the impugned order so passed by the learned Judicial magistrate, 1st Class, suffer from no infirmity or illegality, and there is no merit in this petition, and therefore, it is contended to dismiss the same.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record. Also, I have carefully gone through the impugned dated 12.06.2017, passed by the learned Judicial Magistrate 1st Class, Tinsukia and the judgments and orders of the learned Sessions Judge, Tinsukia, dated 01.12.2017, in Criminal Revision

Petition No. 40(2)/2017, and the case laws referred by Mr. Kalita, the learned Advocates for the petitioner.

8. Before delving a discussion into the controversy at hand, it would be beneficial to understand the spirit and object of section 294 of the Code of Criminal procedure. In the case of Shamsher Singh Verma (supra) Hon'ble Supreme Court has held that

"10. Section 294 CrPC reads as under: -

"294. No formal proof of certain documents. – (1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved."

11. The object of Section 294 CrPC is to accelerate pace of trial by avoiding the time being wasted by the parties in recording the unnecessary evidence. Where genuineness of any document is admitted, or its formal proof is dispensed with, the same may be read in evidence. Word "document" is defined in Section 3 of the Indian Evidence Act, 1872, as under: -

" 'Document' means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations:-

A writing is a document;

Words printed, lithographed or photographed are documents; A map or plan is a document;

An inscription on a metal plate or stone is a document; A caricature is a document."

It is also held that:-

"14. In view of the definition of 'document' in Evidence Act, and the law laid down by this Court, as discussed above, we hold that the compact disc is also a

document. It is not necessary for the court to obtain admission or denial on a document under sub-section (1) to Section 294 CrPC personally from the accused or complainant or the witness. The endorsement of admission or denial made by the counsel for defence, on the document filed by the prosecution or on the application/report with which same is filed, is sufficient compliance of Section 294 CrPC. Similarly on a document filed by the defence, endorsement of admission or denial by the public prosecutor is sufficient and defence will have to prove the document if not admitted by the prosecution. In case it is admitted, it need not be formally proved, and can be read in evidence. In a complaint case such an endorsement can be made by the counsel for the complainant in respect of document filed by the defence.”

9. In the case of Md. Akbor and Another (supra) Andhra Pradesh High Court has held that:-

“The documents produced with the petition are certified copies of Order of Civil Court, pahanies and F.I.R., which are all public documents within the meaning of Section 74 of Evidence Act. As per Sec.76 of the Evidence Act, certified copies of public documents can be issued to anybody, and as per Sec.77 of the Evidence Act certified copies of public documents can be produced in proof thereof. Sub-Section [3] of Section 294 Cr.P.C. applies to private documents, but not to public documents since question of proof of signatures in the certified copies of public documents does not arise. If documents, which are not public documents, are sought to be relied on by the prosecution only, question of proof of those documents and signatures therein would arise. In this case since all the three documents produced by the prosecution are public documents within the meaning of Sec.74 of the Evidence Act, strictly speaking no formal proof thereof is necessary and so they can be admitted in evidence by virtue of Sec.77 of the Indian Evidence Act. So I find no merits in this petition.”

10. From a bare perusal of the impugned order, dated 12.06.2017, reveals that the learned court below has allowed the petition No. 3036, dated 27.10.2016, and arrived at a conclusion that ‘a direction issued to the accused persons calling upon them to admit or to deny the genuineness of the documents in question cannot under any circumstances amounts to coercion, threat or influence.’ It is also stated in the impugned order dated 12.06.2017, that ‘the accused persons will submit their response in writing before this court on the next date’. It is to be mentioned here that in the petition No. 3036, dated 27.10.2016, the respondent has prayed for issuance of direction to the petitioner to admit or deny following documents:-

- (i) The genuineness of filing of plaint in the Title Suit No. 58/2014 by the complainant against the accused No. 1 and 2 in the court of Civil Judge, Tinsukia,
- (ii) The genuineness of written statement dated 31.03.2014 duly signed by the accused No.1 and 2 in reply to the plaint of the complainant of his Title Suit No.58/2014, filed in the Court of Civil Judge, Tinsukia,

(iii) The genuineness of legal notice dated 15.03.1985, issued in the letterhead of Shri K. Agarwal, Advocate Tinsukia, duly signed by him and filed by accused No. 1 and 2 with their written statement in T.S. No. 58/2014 in the Court of Civil Judge, Tinsukia;

(iv) The genuineness of the records of C.R. Case No. 173c/2003 containing deposition of BSNL officials Tinsukia, and Certificate issued by Office of the BSNL, Tinsukia in connection with 7-digit phone numbers.

11. Thus, it appears that of the four documents, which are sought to be admitted or denied in the proceeding of C.R. Case No. 39/2016, by the petitioners, one is certified copy of the plaint. It is the document of the respondent. Two other documents i.e. written statement and the legal notice dated 15.03.1985, issued in the letterhead of Shri K. Agarwal, Advocate Tinsukia, enclosed with the written statement in T.S. No. 58/2014, by the petitioners No.1 and 2, as defendants are also certified copy and are the documents of the petitioners. And the fourth one is the Court's record in the proceeding of C.R. Case No. 173c/2017 filed by the respondent. They are all public documents within the meaning of Section 74 of Evidence Act. As per Sec.76 of the Evidence Act, certified copies of public documents can be issued to anybody, and as per Sec.77 of the Evidence Act certified copies of public documents can be produced in proof thereof, as has been held by the Andhra Pradesh High Court in the case of Md. Akbor and Another (supra). The question of formal proof of those four documents would arise only if those were of private documents. Since all the four documents produced by the respondent, are public documents within the meaning of Sec.74 of the Evidence Act, to the considered opinion of this court no formal proof of those four documents are necessary. The same can be admitted in evidence by virtue of Sec.77 of the Indian Evidence Act.

12. Further, import of the impugned order, dated 12.06.2017, and goes to show that the learned court below has issued direction to the petitioners calling upon them to admit or to deny the genuineness of the four documents in question. Now, the question, that arises for consideration is, whether in the given facts and circumstances, the petitioners can be compelled to admit the documents in questions. The answer is got to be emphatic no. The object of Section 294 Cr.P.C is very clear i.e. to shorten the prosecution evidence and to ensure that certain documents when admitted by the accused need not be proved by the prosecution. The intention of the legislature was not to bind or compel the accused persons to admit or deny the genuineness of the documents produced by the prosecution. Law is well settled that an accused cannot be compelled to deny or admit a document; it would run counter to the constitutional mandate, as enshrined in Article 20(3) of the Constitution of India. It is not necessary for the accused, who is called upon to admit or deny the document, to choose either of these options and he may simply keep silence in respect of the document which may as well be an expression of his fundamental right under Article 20(3) of the Constitution of India which says that no person accused of any offence

shall be compelled to be witness against himself. The right to remain silent in a criminal proceeding is sacrosanct and it flows from the Article 20(3) of the Constitution of India. And no Court can compel or direct an accused to admit/deny any document. It is also not the intent of the legislature under Section 294 Cr.P.C.

13. A Division Bench of Bombay High Court also in the case of State of Maharashtra v. Ajay Dayaram Gopnarayan & Ors. reported in 2014 (2) Bom. (Cri.) 40 and the case of Niwas Keshav Raut v. State of Maharashtra reported in 2015 (4) Bom. C.R. (Cri.) 397 held that the accused cannot be compelled to admit or deny any document and that any such direction to an accused, to do so, would clearly violate Article 20(3) of the Constitution of India. And that the petitioner/original complainant cannot be absolved of his duty to prove his case as against the respondent No.1/accused.

14. Further, it appears that petitioner No.3 is not a party to the Title Suit No.58/2014. Therefore, asking him to deny or admit the documents which were filed in the said Title Suit, seems to be bereft of any logic.

15. This being the factual and legal position, this court is of the considered opinion that the impugned order cannot withstand the legal scrutiny and therefore, this court is inclined to invoke the jurisdiction under section 482 of the Code of Criminal procedure to quash the impugned order, dated 12.06.2017, passed by the learned Judicial Magistrate 1st Class, Tinsukia in Complaint Case No. 39/2016, and also the impugned Judgment and Order dated 01.12.2017, passed by the learned Sessions Judge, Tinsukia, in Criminal Revision Petition No. 40(2)/2017.

16. In the result, I find sufficient merit in the present Criminal Petition, and accordingly, the same stands allowed. The impugned order, dated 12.06.2017, passed by the learned Judicial Magistrate 1st Class, Tinsukia in Complaint Case No. 39/2016, and also the impugned Judgment and order dated 01.12.2017, passed by the learned Sessions Judge, Tinsukia, in Criminal Revision Petition No. 40(2)/2017, stands set aside and quashed. The parties have to bear their own costs.