
(2012) 03 GAU CK 0089

In the Gauhati High Court

Case No : Criminal Revision Petition No. 404 and 453 of 2010

Lakshman Gupta and Another

APPELLANT

Vs

Hemendra Lal Baruah and Another

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 155(2), 156(1), 202

Penal Code, 1860 (IPC) — Section 34, 420, 468

Citation : (2012) 3 GLT 150

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : B. Sinha and Mr. D. Sarma, for the Appellant; D. Das, Addl. PP, Mr. A.K. Das and Mrs. A. Goswami, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Musahary, J.—Both these petitions are directed against the order dated 10.8.2010 passed by the learned S.D.J.M II, Kamrup, Gauhati in Case No. 2899 c/20010 whereby cognizance of offence u/s 420/468/34 IPC was taken against the petitioners on the basis of complaint filed by the O.P. and the deposition of the complainant and his witness. By filing these petitions, the petitioners are seeking quashment of the complaint and the proceedings initiated and pending in the aforesaid Court. For the sake of convenience both these petitions are heard together and being disposed of by this common judgment and order. The O.P./complainant filed the complaint before the learned C.J.M, Kamrup, Guwahati which was registered as CR Case No. 2899 c/10 and made over to the SDJM II, Kamrup, Guwahati for disposal. It is stated that the O.P. Shri Hemendra Lal Baruah and his wife purchased 2 different plots of land measuring 3K 15 lechas each by executing registered sale deeds No. 4173/01 dated 18.6.2010 and 5007/01 dated 14.6.01 from the recorded pattadar and have been possessing the same from the date of purchase. There after the O.P/complainant and his wife got their names mutated and got the final patta during the settlement

operation, filed a proceeding u/s 145/146 Cr.P.C. before the Addl. Deputy Commissioner, Kamrup, Guwahati against Shri Tarini Medhi, Attorney of Shri Champaklal Himudia, which was registered as case No. 85 m/2006. The learned SDJM while drawing up a proceeding u/s 145 CrPC, attached the disputed land vide order dated 27.3.2006 and finally declared possession in favour of the O.P/ complainant vide order dated 14.9.07. Thereafter, Shri Tarini Medhi, Attorney of Shri Champaklal Himudia, against the said order, preferred a revision before the learned Sessions Judge, Kamrup, Guwahati. It was dismissed. There after accused Himudia filed a Title Suit being T.S. No. 433/07 against the O.P/ complainant and his wife which was dismissed on contest by the learned Musniff No. II, Guwahati vide order dated 19.5.10. Decree was also prepared accordingly but no appeal was filed by the O.P. or any other party against the said judgment and order passed in the aforesaid Title Suit. The O.P/complainant thereafter came to know that the petitioner Jogen Chandra Gogoi, the accused/petitioner, sold a plot of land measuring 3 Kathas 10 Lechas covered by Dag No. 81, Patta No. 82 of village Saukuchi under Mouza Beltola which belongs to the O.P/ complainant and involved in TS 437/07 to one Shri Lakshman Gupta, the petitioner in Crl. P.No. 404/10, by executing the sale deed No. 3999 dated 3.7.10. The complainant/O.P, alleged that the accused/petitioners obtained the sale permission from the concerned Revenue Authority by suppressing the fact and swearing false affidavit. The Accused/petitioner Shri Jogen Chandra Gogoi, sold the land in question after the accused Himudia lost the Title Suit.

2. I have heard Mr. K. Agarwal, learned counsel for the petitioner in Crl. P.No. 404/10 and Mr. B. Sinha, learned counsel for the petitioner in Crl. petition No. 453/10. Also heard Mr. A.K. Das, learned counsel for the O.P/complainant and Mr. D. Das, learned Addl. P.P, Assam for O.P. No. 1 on Crl.P. No. 453/10.

3. Mr. Agarwal, learned counsel for the petitioner submits that the statements/ allegations made in the complaint petition as well as initial deposition of the complainant and his witness u/s 202 Cr.P.C. do not contain any definite accusation against the petitioner, nor do they constitute offence u/s 420/468/34 IPC and as such it is conceptually misconceived and legally untenable on the part of the learned Magistrate to take cognizance of offence against the petitioner under the aforesaid sections of the IPC. The accused/petitioner, as argued by Mr. Agarwal, being a bonafide purchaser for value and he being in possession of the land in question and the said land being assessed by the Municipal Corporation, cannot be said to have committed offence u/s 420/468/34 IPC and the learned trial court issued process without application of judicial mind. If the proceeding continues it would amount to unnecessary harassment on the petitioner and it would be nothing but the abuse of process of the court, which must be interfered with and quashed at the threshold. For making a point for such interference by this court, he primarily relies on the decision of the Apex Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, and Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, . He also refers to the following cases:-

(1) Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors.; (2007) 12 SCC 1

(2) Harishchandra Prasad Mani & Ors. Vs. State of Jharkhand & Anr.; (2007) 15 SCC 494

(3) K.L.E. Society and Others Vs. Siddalingesh,

(4) Devendra and Others Vs. State of U.P. and Another, ;

(5) Md. Ibrahim and Others Vs. State of Bihar and Another, and

(6) M.N. Ojha and Others Vs. Alok Kumar Srivastav and Another, .

4. Countering the aforesaid arguments advanced by the learned counsel for the petitioners, Mr. A.K. Das, learned counsel for the O.P/complainant submits that the accused petitioner Shri Jogen Chandra Gogoi and Shri Lakshman Gupta and the accused Champak Lal Himudia indulged themselves in committing forgery for the purpose of cheating within the meaning of Section 468 IPC after the accused/petitioner Shri Champaklal Himudia lost his case in the Criminal proceedings u/s 145/146 Cr.P.C. and also in the Title Suit. The alleged execution of sale deeds took place subsequently by obtaining sale permission from the District Revenue Authority by suppressing the facts, particularly the fact that the O.P/complainant purchased the land in question long back and got his name and the name of his wife mutated and recorded as pattadars. According to Mr. Das, learned counsel, sufficient materials have been disclosed and placed against the petitioners implicating them in the case of cheating and forgery which are enough to show prima-facie case and proceed against them. Placing a case decided by the Apex Court in the State (Govt. of NCT of Delhi) Vs. D.A.M. Prabhu and Another, it is submitted by him that taking into consideration of the present case, threshold interference is not called for inasmuch as the stand taken by the accused/petitioner is essentially defence which is to be considered at the time of trial and not at the initial stage.

5. There is no doubt that the court exercising power u/s 482 Cr.P.C, should be guided by the principle laid down in the State of Haryana and others Vs. Bhajan Lal's case (supra). An illustrative categories of cases in which power under Article 226 and/Section 482 CrPC could be exercised has been indicated by the Apex court in Bhajan Lal's case which are quoted below :-

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted at 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 u/s 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 u/s 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 malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreak vengeance on the accused and with a view to spite him due to private and personal grudge.

6. The present is a complaint case instituted before the C.J.M by the Opposite party. Bhajan Lal's case (supra) is founded on a written FIR. However, the basic requirement of law is same. The materials both in FIR lodged with the police or complaint filed before the Judicial Magistrate, must at their face value and accepted in their entirety, prima-facie constitute the offence alleged and if the uncontroverted allegation made in the FIR or complaint and the offence alleged do not disclose the commission of any offence to make out a case against the accused, it would be categorised as a case where the proceedings should be stopped or interfered with. From the submissions made by the learned counsel for the petitioner, it is discernible that in the complaint there is not even a whisper about the sale of land in question by the accused/petitioners Shri Jogen Chandra Gogoi and Shri Lakshman Gupta in collusion with accused Shri Champaklal Himudia after he lost the case in the proceeding u/s 145/146 Crpc. and in Title Suit. It has been sought to establish by the petitioners that the land purchased by the O.P. complainant from the recorded pattadar and the land sold by the accused/petitioner Shri Jogen Chandra Gogoi to accused/petitioner Lakshman Gupta are different plots. It has also been sought to establish that the accused/petitioners executed a valid sale deed after obtaining necessary sale permission etc without suppressing any material fact before the District Revenue Authority and thereby the question of committing any offence of cheating u/s 420 and forgery u/s 468 IPC does not arise.

7. In the said backdrop of the case, the petitioners sought to establish that the act of cheating and forgery as alleged in the complaint are absurd and inherently improbable inasmuch as the possession has been declared already in favour of the O.P/complainant in 145/146 Cr.P.C. proceedings and his right, title and

interest have been declared in his favour in the Title Suit and no averment has been made in the complaint that the O.P./complainant has been dispossessed from his land or sought to be dispossessed by the accused/petitioners therefrom. The petitioners, in other words, are trying to make out a case that the OP/complainant has no case against the petitioners in so far as he has so far taken no action to remove them from the occupation/possession of the land purchased by him from the original owner Shri Ratna Saharia and Smt. Jamuna Devi as revealed from his initial deposition before the court.

8. I have perused the lower court record. A photocopy of the Sale Deed No. 3612 executed/registered on 19.4.82 has been furnished by the complainant. As per this Sale Deed Shri Jogendra Chandra Gogoi, the accused/petitioner sold a plot of land measuring 1 Bigha at a consideration of Rs. 14,000/- to Mr. Champaklal Himudia. As per the schedule of land mentioned in the said deed, the land sold is covered by Dag No. 81, Patta No. 82 in village Saukuchi under Beltola Mouza. No boundary has been shown in the schedule of land. A photocopy of the certificate dated 15.12.03 issued by the Settlement Officer, Guwahati which was annexed as Annexure IV to the complaint petition, is also available on record. As per this certificate, the complainant Shri Hemendra Lal Barua and his wife Smt. Aloka Barua purchased the aforesaid plots of land, got their names mutated and also got separate pattas issued in their names. The record contains a photocopy of the Sale Deed No. 399 executed and registered on 3.7.10 at Guwahati between the two accused/petitioners Shri Jogen Chandra Gogoi and Shri Lakshman Gupta. As per this Sale Deed the said Shri Jogen Chandra Gogoi sold his land measuring 3 Kathas 10 Lechas covered by Dag No. 81, Patta No. 82 of village Saukuchi under Mouza Beltola, Kamrup (M) district. The Dag No. and Patta No of the land sold in 1982 to Shri Champaklal Himudia and Dag No. and Patta No. of land sold to Shri Lakshman Gupta in 2010 are same except that in the later Sale Deed the area of land is lesser. It has not been disclosed or found from record whether the land measuring 3 Kathas 10 Lechas sold by the accused/petitioner Shri Jogen Chandra Gogoi in 2010 is a part/portion of bigger area of 1 Bigha, a plot which was sold by the accused Shri Jogen Chandra Gogoi to Shri Champak Himudia in 1982. It was possible that a portion measuring 3 Kathas 10 Lechas from 1 Bigha of land sold earlier has been again sold to accused Shri Lakhman Gupta in 2010. In the east side of the boundary of the land, the land of Smt. Aloka Baruah (wife of complainant Shri Hemendra Lal Barua) and others has been shown. The word " others" followed by the name of Smt. Aloka Baruah definitely indicates the name of Shri Hemendra Lal Barua because both the husband and wife purchased 3 Kathas 15 Lechas of land each.

9. In my considered view there are two important facts to be discovered. One fact is whether the land in question i.e. 3 Kathas 10 Lechas purchased by the accused/petitioner Shri Lakshman Gupta is covered by the same periodic patta and Dag of a bigger area including the plot of land covering 1 Bigha sold by Shri Jogen Chandra Gogoi in 1982 to Shri Champaklal Himudia. If it is a part of such bigger plot of land covered by the same Dag and Patta No, there is no absurdity

in selling the plot in question i.e. 3 Kathas 10 Lechas subsequently in the year 2010 to the accused/petitioner Shri Lakshman Gupta. The other fact is, if the land in question purchased by the accused/petitioner, Shri Lakshman Gupta in the year 2010 is covered by the same patta and Dag No., whether he happened to purchase the land in question without any knowledge about it or he, with full knowledge about the encumbrance of the land in question, purchased it. If he has purchased it with such knowledge, there is possibility of his collusion with the owner of the land Shri Jogen Chandra Gogoi. In this regard the statements made in paragraph 8 of the complaint may be taken into consideration. For better appreciation of the said fact the same is reproduced here-under:-

7. The complainant states that the accused persons have obtained the Sale Permission from the concerned Revenue Authority for the aforesaid land by suppressing the facts and by swearing false affidavit where patta have been issued in the name of complainant and his wife Smt. Alaka Barua and decree has been passed in the court of Munsiff No. 1 in T.S. No. 433/07.

8. That the complainant states that accused No. 1 Jogen Ch. Gogoi had sold 1 Bigha land covered by Dag No. 81, Patta No. 82 of village Saukuchi under Beltola Mouza, in the district of Kamrup (Metro), Assam, on 19.04.1982 vide Regd Deed No. 3612/82 to one Shri Champaklal Himudia who was the plaintiff of T.S. No. 433/07. It is pertinent to mention herein that no boundary has been written in the schedule of the aforesaid Deed. The complainant further states that same Jogen Ch. Gogoi has again with a malafide intention sold the same plot of land measuring 3 Kathas 10 Lechas to Sri Lakshan Gupta vide Registered Deed no. 3999/2010.

10. From the statements/allegations made in the complaint and the submissions made by the learned counsel for the parties, there should not be any doubt that some dubious transaction took place amongst three persons namely, the accused petitioner Jogen Ch. Gogoi as land owner, Sri Champaklal Himudia, purchaser of land from Jogen Ch. Gogoi in 1982 and Sri Lakshman Gupta, purchaser of land from Jogen Ch. Gogoi for the second time in 2010. The position is not clear as to how and why the second sale took place in respect of plot of land covered by the same Patta and Dag No. It is apparently found clear that the transaction or transfer of the land by way of aforesaid Sale Deeds particularly, Sale Deed of 2010, is manifestly attended with malafide action/intention of the accused/petitioners and the accused/petitioner Sri Champaklal Himudia. Such malafide action and complicity of these three accused persons has been surfaced, particularly against the accused/petitioners Jogen Ch. Gogoi, Sri Champaklal Himudia and Sri Lakshman Gupta. There is an inbuilt ingredient of offence u/s 468/420/34 IPC against all the accused persons which is surfacing on the complaint petition itself which is affirmed in the initial deposition of the complainant opposite party and his witness.

11. I have heard Mr. B. Sinha, learned counsel for the accused/petitioner in Crl.P. No. 453/10 who adopts the submission made by Mr. Agarwal, learned counsel for

the accused/petitioner in other case.

12. In my considered view, the law settled in D.A.M. Prabhu (supra) as relied upon by the O.P/complainant squarely covers the present case inasmuch as the Apex Court came down heavily against interference with the criminal proceedings at the threshold in cases where the accused/OP takes his/its defence to be taken at the stage of trial without providing the scope for necessary enquiry by the trial court. Because of the prevailing settled position of law in regard to exercise of inherent power u/s 482 Cr.PC in the matter of quashing the proceedings, I do not want to make any further discussion referring to all the cases cited by the learned counsel for the petitioner. The complaint of the OP requires enquiry by the trial court. This is a bounden statutory duty cast on the Magistrate. In my considered view the accused/petitioners have filed the present petitions as a sword or weapon to preempt and abort the proceedings initiated by the complainant/OP in the garb of calling upon this court to use the power u/s 482 CrPC to prevent the abuse of process of the court. I repeat, the nature of allegation as made in the complaint requires enquiry by the Magistrate concerned and trial in accordance with law. The ends of justice would suffer, if such enquiry and trial is prevented at the initial stage. The power of enquiry and trial is within the domain of the trial court and such power and jurisdiction of the trial court cannot be usurped by the High Court in exercising its power u/s 482 Cr.PC.

13. The above discussion and findings, dissuade me from passing an order setting aside the impugned order dated 10.8.10 and quashing the proceedings as demanded by the petitioners. Both the petitions are hereby dismissed. The parties shall appear before the learned trial court on 27.3.12 to take order from the trial court for furthering the proceedings. Return the LCR forthwith.