(2019) 05 GAU CK 0016

In the Gauhati High Court

Case No : Criminal Petition No. 272 Of 2017

Mantosh Paul APPELLANT

Vs

State Of Assam RESPONDENT

Date of Decision : 07-05-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120(B), 406, 420
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2019) 05 GAU CK 0016

Hon'ble Judges : Rumi Kumari Phukan, J

Bench : Single Bench

Advocate : Kk Mahanta, D Das

Final Decision : Dismissed

Judgement

1. Heard Mr. KK Mahanta, learned counsel for the petitioner and Mr. D Das, Additional P. P. for the State.

2. By way of this application under Section 482, the petitioner has sought for quashing of the FIR dated 01.12.2014 pertaining to Lumding PS Case No.298/2014 under Section 120(B)/406/420/34 IPC.

3. The petitioner herein is the elder brother of the informant, Dipak Ranjan Paul, who has breathed his last on 11.01.2016 after prolong illness. After death of the wife of Dipak Ranjan paul said Dipak Ranjan also found to be suffered from cancer, for which the petitioner and his family member used to look after him including medical care. To carry out the cost of medical treatment, said Dipak Ranjan decided to sell his land situated at Lumding town and the present petitioner being his brother helped him to sell out the said property and the sell proceed was deposited in the Lumding Branch of Punjab and National Bank by opening an account in his name. The pension amount of Dipak Ranjan also credited to his own savings account maintained in Lumding Branch. The treatment of Dipak Ranjan was continued with the amount deposited in the bank

and he used to reside in the house of the petitioner as well as his younger sister. According to the petitioner to carry out the expanses of the medical treatment his brother Dipak also issued five account payee cheques in favour of petitioner and all these cheques except one were credited to the petitioners State Bank Account, Lumding but one of the cheque amounting to Rs.6,00,000/- was not credited to the petitioner's account then on query the petitioner came to know that his brother has stopped the payment of the cheque and also filed an FIR against the petitioner and other family members including his mother (since deceased) with the allegation that the petitioner and other co-accused had fraudulently drawn Rs.23,000/- from the account of Dipak Ranjan by forging his signature, which has been registered as Lumding PS Case No.298/2014 under Section 120(b)/420/406/34 IPC.

4. Challenging the aforesaid FIR the present petition has been preferred on the ground that allegations made in the FIR are self contradictory, baseless and concocted and do not make out a case under Section 120(b)/420/406/34 IPC. It contents that all the cheques were drawn in favour of petitioner and cheques were cleared and paid by the bank having found the signature of the drawer as genuine and hence question of forgery and cheating does not arise. It is submitted that the FIR has been lodged at the instigation and influence of the third person, and it is a handy work of third party, the result of their heart burning, as they used to draw the pension of said Dipak Ranjan Paul even after his death by suppressing the facts. The prayer has been made to quash the FIR on subsequent proceeding including the charge-sheet if any.

4. The learned counsel for the petitioner Mr. Mahanta has submitted that such an allegation has been made in the FIR only at the instigation of other family member having vested interest and the petitioner is no way associated with the offence as alleged. It contends that the informant has expired by this time and petitioner used to look after him prior to his death who used to stay in his house sometimes and also in the house of her sister and such false and fabricated FIR has been lodged by one relative of Dipak Ranjan namely Bijoy Barman with a view to harass the petitioner as a result of family feud.

5. The learned Addl. PP on the basis of the material in the case diary that has been produced before this Court has submitted that there is sufficient complicity of the present petitioner in the said case as per the allegation made in the FIR. The statement of informant was recorded prior to his death wherein he has given all incriminating evidence against the present petitioner which is again supported by the other witnesses. It contends that there being prima facie allegation coupled with the evidence in the case diary, quashing of FIR cannot be considered.

6. The learned counsel for the petitioner further contended that in view of the informant given by the bank officials vide annexure-3 and 4, where the bank has apprised that the signature of the drawer in the cheque (AC paying) issued in favour of the petitioner by Dipak Ranjan is authentic and as such there cannot be

any forgery on his part regarding manipulation of cheque. Similarly, referring to the annexure-5 whereby SBI has informed one Bijoy Barman that the pension amount of Dipak Ranjan has temporarily stopped w.e.f 11.01.2016. It has been contended that the pensionary benefit was withdrawn by other family members fraudulently and he has been falsely implicated in the present case.

7. Pursuant to the submission made above, this Court has gone through the entire materials in the case diary including the FIR.

8. So far as the FIR is concerned, it reveals that the informant has raised serious allegation against the present petitioner that by deceiving him fraudulently and dishonestly to open the bank account at Punjab National Bank, Lumding Branch, he has withdrawn huge amount of money from the said account without his information and consent taking advantage of his ailment and treatment. He could learn from the passbook of the savings account of SBI where his pension amount was credited that the all the cheques were filled and made account payee cheques by the petitioner and has withdrawn Rs. 23 lakhs from his savings account at Punjab National Bank, Lumding and SBI, Lumding by forging his signature and also by way of misrepresentation. Obviously, FIR has made out a prima facie case against the accused petitioner although by this time the informant has expired.

9. Case diary reveals statement of sister and sister in law of the present petitioner as well as the informant has been recorded and certain investigation was carried out in the respective bank to access the matter of withdrawal from the account of the informant and to take the signature of the informant but due to serious ailment of the informant his signature could not be obtained. The investigating officer also tried to collect the specimen signature of accused petitioner, to compare the same with the disputed cheque but he is avoiding and tried to hamper the investigation.

10. The statement so far recorded during the investigation has, however, supported the allegation raised in the FIR, although, the informant in the meantime has expired. In view of the prima facie allegation in the FIR supported by the witnesses thereof, this Court is of opinion that it is not a fit case to quash FIR and the proceeding. The challenge made by the petitioner about the falsity of the allegation or otherwise is a subject matter of proper investigation and or trial and the same cannot be decided by this Court under such provision/ inherent power of the Court. The authenticity of the matter can be tested in due investigation which is not yet completed.

11. The law is settled that the inherent power of the Court u/s 482 CrPC can be invoked in rarest of rare cases with circumspection and the same can be invoked only to prevent the abuse of process of law and to secure the ends of justice. The Court is not obliged to quash an FIR on the allegation that the same has been filed on false allegation or otherwise. As has been discussed above, a prima facie allegation is made out in the FIR which is supported by the other witnesses and

at this stage the Court should not interfere into such allegation to conduct an enquiry about the authenticity of the allegation. While exercising powers under the section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. Exercise of inherent power under section 482 of the Code of Criminal Procedure is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would likely to be ended in acquittal.

12. This court observers with concern that despite the case being filed in the year 2014 due to the lethargic approach by the investigating officer, no full-fledge investigation has taken place and not to speak of filing final form. Such a delayed investigation without proper justification cannot be appreciated. A litigant is the worst sufferer for long pendency of criminal proceeding against him and it is incumbent on the part of investigating agency to conclude the investigation within a reasonable period which is not reflected in the present case.

13. Persuaded by what has been discussed above, the present petition stands dismissed with a direction to the investigating officer to conclude the investigation to give a logical end within a reasonable period. Return the case diary.

