

(2023) 10 GAU CK 0022
In the Gauhati High Court

Case No : Criminal Petition No. 152, 153, 154, 156, 157 Of 2021

Md. Miri Ali And Anr

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 10-10-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 35, 120B, 325, 384, 406, 409, 420, 425, 441, 447, 448, 468, 471, 506
Code Of Criminal Procedure, 1973 — Section 161, 173(2), 210, 228, 482
Prevention of corruption Act, 1988 — Section 7

Citation : (2023) 10 GAU CK 0022

Hon'ble Judges : Arun Dev Choudhury, J

Bench : Single Bench

Advocate : M K Choudhury, K K Parashar

Final Decision : Dismissed

Judgement

1. Heard Mr. M. K. Choudhury, learned Senior Counsel assisted by Mr. P. Bhardwaj, learned counsel for the petitioner. Also heard Mr. K. K. Parashar, learned Additional Public Prosecutor for the State of Assam and Mr. B. Kaushik, learned counsel for the respondent No. 2.

2. The challenges:

These criminal petitions were taken up together for hearing as all the petitions relates to the challenge of FIR/CR case arising out of the same occurrence. Therefore, the brief facts of the each of the case as narrated in the petitions following manner.

I. Criminal Petition No. 154/2021: This petition is filed for quashing of an F.I.R. dated 13.10.2020 registered as Kampur P.S. Case No. 225/2020 under Sections 120(B)/406/409/420/468/471 of IPC lodged by the respondent No. 2 namely Md. Ali Azgar against the present petitioner and his son namely Mijar Al, one Sri Pallab Kumar, Sub Registrar, Kampur, one Smt. Sangita Borthakur, Circle Officer,

Kampur Revenue Circle, one Sri Sashi Bora, 2nd Officer, Kachua Police Station and one Sri Sasinanada Bora, Deed Writer. Except the present petitioner, the other accused persons have not approached this Court.

The basic allegation in the FIR is that the accused person forged the signature of the informant and obtained sale permission and on the basis of the said sale permission, executed a registered sale deed in his absence and the present petitioner (accused No.1) got his name mutated without following any government order, rules and regulations. It was a further allegation that on 01.11.2020, the accused No. 2 along with 20/22 goons illegally trespassed into his land and dispossessed him and his family members by assaulting them and has grabbed the land and houses.

II. Criminal petition No. 157/2021: By this petition the challenge is made to the proceeding of CR Case No. 458/2020 pending in the Court of learned Chief Judicial Magistrate, Nagaon under Section 420/506/447/325/406/468/34 of IPC 1860. The complaint was also filed by the respondent No. 2 i.e. the informant in Kampur P.S. Case No. 225/2020 as detailed hereinabove on the same factual background and same allegation, except an additional allegation against his son and son-in-law to the effect that the said two accused persons in collusion with the accused No. 1 and 2 committed the offence as alleged in the FIR. The another ground for lodging the complaint before the Magistrate was stated to be for the reason that the Kampur Police Station refused to register the FIR.

III. Criminal petition No. 152/2021: By this petition a prayer for quashing the proceeding of CR Case No. 3/2021 pending before the court of learned Chief Judicial Magistrate, Nagaon under Section 384/420/425/441/447/448/35 of IPC, 1860 is made.

The complaint was filed by one Md. Fakaruddin respondent No.2 who is the nephew of Ali Azgar, the informant in Kampur PS Case No. 225/2020 and complainant in CR Case No. 458/2020 as discussed hereinabove. The complaint arises out of the same incidents. The allegations are more or less same with an additional allegation that the accused person forged his signature also and counterfeited his photographs and used his forged signature for obtaining land sale permission as co- pattadar of the land in question. It was further alleged that the Sub Registrar, Kamrup, and Circle Officer, Kampur is involved with the fraud committed.

IV. The Criminal petition No. 156/2021: By this petition a challenge is made to the complaint case being CR Case No. 02/2021 pending before the learned Court of Chief Judicial Magistrate, Nagaon under Sections 384/420/425/441/447/448/34 of IPC. Such complaint was filed by the respondent No. 2, Md. Abul Hussain son of Ali Azgar, the informant in Kampur PS Case No. 225/2020 alleging similar offence as allegedly committed on 01.11.2020.

V. The Criminal petition No. 153/2021: By this petition a challenge is made to the

complaint case being CR Case No. 314/2020 pending before the learned Court of Chief Judicial Magistrate, Nagaon under Sections 420/468/506/34 of IPC by the said Md. Abul Hussain son of Ali Azgar, the informant in Kampur PS Case No. 225/2020 alleging similar offence as allegedly committed on 01.11.2020.

The learned counsel for respondent No. 2 submits that this two-complaint petition i.e. CR Case No. 02/2021 and CR Case No. 314/2020 are similar to that off Kampur PS Case No. 225/2020 and CR Case No. 458/2020 and if this Court allows the proceeding of the aforesaid two cases, no cause of action shall survive for CR Case No. 02/2021 and CR Case No. 314/2020

3. The FIR in Kampur PS Case No. 225/2020:

A reading of the allegations and averments made in F.I.R., the following facts are discernable:-

I. The informant Md. Ali Azgar is the owner and possessor of the land scheduled in the FIR.

II. The accused person jointly took out a sale permission of the scheduled land on 13.10.2020 in absence of the informant by forging his signature.

III. On the basis of such sale permission, a registered sale deed was executed in the absence of the informant in favour of the accused No. 1 Miri Ali.

IV. Without any due process/order of the Government, the accused No. 1 got his name mutated in respect of the land.

V. On 01.11.2020, accused No. 1 and 2 with 20/22 goons forcefully entered into the land in question and forcefully took out the informant and his family members out of their house and also beaten them up and forcefully took possession of their residence.

VI. Seeking justice, the informant on the same date, lodged a written FIR, before the local Kachua Police Station, however, the 2nd Officer of the Police Station had misbehaved him and kept him inside the police station for the whole day and he was released in the evening by taking the bribe of Rs. 25,000/-.

VII. In the sale deed executed on 13.10.2020, there are only two/three/four signatures, but most of the page of the sale deed, there are no signature of the seller.

VIII. The stamp papers are also purchased on different dates and some are even purchased in the month of August.

IX. If the forged sale deed is examined properly many other defects can be found.

X. The photostat copy of the illegally executed sale deed and the mutations are annexed with the FIR.

4. CR Case No. 458/2020 pending in the Court of learned Chief Judicial

Magistrate, Nagaon under Section 420/506/447/325/406/468/34 of IPC 1860

The allegation leveled in the Kampur PS Case No. 225/2020 and the allegation made in CR Case No. 458/2020 are the same except one additional that both his son and son-in-law in collusion with the present petitioner and his son committed the offence as alleged in the FIR. It was also averred and explained that as the FIR dated 13.10.2012 lodged before the Kampur Police Station was not registered, the CR Case was filed.

5. CR Case No. 3/2021 pending before the court of learned CJM, Nagaon under Section 384/420/425/441/447/448/35 of IPC, 1860.

This complaint relates to the allegation of trespass, assault, and forceful dispossession as well as acceptance of bribe of Rs. 25,000/ as alleged in Kampur PS Case No. 225/2020 inasmuch as the complainant is the nephew of the informant complainant of Kampur PS Case No. 225/2020 and CR Case No. 458/2020 namely Ali Azgar.

6. Argument advanced by the learned counsel for the petitioner:-

Mr. M. K. Choudhury, learned Senior Counsel argues the following:

I. From the multiple complaint and FIR filed against the petitioner No. 1 clearly establishes that the entire proceeding has been filed in connivance with respondent No. 2 inasmuch as already a civil suit has been filed for cancellation of the sale deed in question and for recovery of possession of the house. The criminal complaints/FIR are filed to prejudice the trial of the civil suit and to coerce the petitioner into a compromise the title suit. The said civil suit was filed prior to the lodging of the FIR dated 13.12.2020. Therefore, the entire criminal proceeding initiated and under challenged before this Court are nothing but abuse of the process of the Court.

II. The registration of the FIR is an illicit attempt of the respondent No. 2 to convert a civil dispute into a criminal one which is not permissible under the eye of law.

III. The FIR dated 13.12.2020 and CR Case No. 458/2020 filed on 11.12.2020 are completely identical and based on same sets of fact and same offence. Therefore, to parerell proceeding are not maintainable. Similar is the case in respect of other cases lodged by the son and nephew of the respondent No. 2.

IV. Relying on the agreement for sale, the complaint lodged by the respondent No. 2 objecting sale and his non participation in such dispute even after receipt of notice and the thump impression and signature of the petitioner in the sale deed and certain photographs showing that the informant was signing the deed and cash were handed over, Mr. Choudhury, learned Senior Counsel submits that from the record annexed with the petition, it is clearly established that the money was duly accepted by the informant, agreement for sale was admitted executed by the informant however, to have undue advantage, the FIR has been

lodged which is nothing but abuse of the process of the Court and therefore, such FIR and complaint cases are liable to be quashed.

V. In support of such contention, Mr. Choudhury, learned Senior Counsel places reliance on paragraph 30 of the judgment of the Hon'ble Apex Court rendered in the case of Rajiv Thapar and Others -Vs- Madan Lal Kapoor reported in 2013 3 SCC 330. The learned Senior Counsel also places reliance upon the judgment of the Hon'ble Apex Court rendered in the case of Amit Kapoor -Vs-Ramesh Chander and Another reported in 2012 9 SCC 460. Mr. Choudhury, learned Senior Counsel further places reliance upon the judgment of the Hon'ble Apex Court in the case of Harsendar Kumar D -Vs- Rebati Lata Koley reported in 2011 3 SCC 351.

7. Argument advanced by Mr. B. Kaushik, learned counsel for the respondent No. 2:

While defending the registration of the FIR and complaint cases, Mr. Kaushik, learned counsel argues the following:-

I. The plain reading of the FIR clearly reveals four folds of allegations, firstly, forging of signatures of the informant to obtain sale permission, secondly, execution of sale deed in his absence and without his signatures, thirdly, trespass, assault and illegal dispossession and fourthly taking of bribe by a public servant. The allegations made out in the FIR from the face of it, prima facie discloses commission of offence which are cognizable and serious in nature.

II. The allegations as to that the accused No. 5 while discharging his duties as a public servant has abused his official capacity has obtained Rs. 25,000/- only and thus this prima facie constitutes as offence under Section 7 of the Prevention of corruption Act, 1988.

III. It is held by the Hon'ble Apex Court that the offences under the Prevention of Corruption Act, 1988 is not only offence affecting the accused but also to the entire society and administration and thus the same is a serious offence wherein the Court normally may not exercise its jurisdiction under Section 482 CrPC for quashing of FIR at investigation stage.

IV. With regard to the allegations as to that the Sale Deeds executed without the signatures of the informant as well as by forging his signature cannot be discarded as false on the basis of the facts projected by the petitioner in the instant Criminal petition.

V. The allegations as to that the accused No. 2 along with his men trespassed into the land of the informant and occupied the land and house by dispossessing him and thereby has assaulted him and his family members.

VI. A civil proceeding as well as a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken up upon arriving at a satisfaction that there exists a prima facie case. In support of his

contention, Mr. Kaushik, learned counsel places reliance upon the judgment of the Hon'ble Apex Court rendered in the case of Sayed Akshari hadi Ali Augustine Imam & Anr –Vs- State of Delhi Administration & Anr reported in 2009 (5) SCC 528. Mr. Kaushik, learned counsel further places reliance upon the judgments of the Hon'ble Apex Court in the case of Skoda Auto Volkswagen India Pvt. Ltd. – Vs- State of UP reported in 2021 (5) SCC 795, Satwinder Kumar –Vs- State (Govt of NCT of Delhi) reported in 1999 (8) SCC 728, M/s Niharika Infrastructure Pvt. Ltd. –Vs- State of Maharashtra reported in Air 2021 SC 1918 and State of Orissa –Vs- Saroj Kumar Sahoo reported in 2005 (13) SCC 540.

8. Decision and determination:-

This Court has given anxious considerations to the arguments advanced by the learned counsel for the parties. Perused the materials available on record including the annexures.

A. Principles of Law:-

(i) In the case of Amit Kapoor (supra) relied on by Mr. K. K. Choudhury, learned Senior, the following principle of law so far relating to exercise of power under Section 482 were culled out:-

"27.1. Though there are no limits of the powers of the Court under Section 482 of the code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. the Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate Courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide

specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and / or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173 (2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. coupled with any or all of the above, where the Court finds that it would amount to because of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex-debito justitiae i.e. to do real and substantial justice for administration of which alone, the Courts exist".

(ii) In the case of Rajiv Thapar (supra) relied on by Mr. Choudhury, certain steps to determine the veracity of prayer for quashment by an accused were laid down, which are as follows:-

30.1. Step one: Whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.1. step two: Whether the material relied upon by the accused would rule out the assertions contained in the charges leveled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. step three: Whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/ or the material is such that it cannot be justifiable refuted by the prosecution/complainant?

30.4. step four: Whether proceeding with the trial would result in an abuse of process of the Court, and would not serve the ends of justice?

30.5. if the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising there from) specially when it is clear that the same would not conclude in the conviction of the accused”.

(iii) In the case of Niharika (supra), the Hon’ble Apex Court has culled out a principle that the police has statutory right and duty under the relevant provision of code of criminal procedure contained in chapter XIV of the Code to investigate into a cognizable offence and Court should not thwart any investigation when a cognizable offence is made out inasmuch as the power of quashing should be exercised sparingly with circumspection.

B. Kampur P.S. Case No. 225/2020:

(i) This Court after reading of the FIR and as detailed hereinabove, if taken to be correct and taken to be uncontroverted prima facie establishes the offences as registered in Kampur PS Case No. 225/2020. Now, It is specific allegation of the informant that he has not executed the sale deed and the sale deed itself donot contain any signature except in few pages and the same are also forge one. If we look at the FIR, it is seen that in many of the pages there are no signatures. Therefore, even if this Court accepts the argument of Mr. Choudhury that the respondent No. 2 informant has not participated in the proceeding before the Registrar even upon receipt of notice regarding the issuance of sale permission, and even if it is accepted that the application for issuance of sale permission was signed by the informant and the sale permission was duly issued the same will not give to purchaser a right to forge the signature of the vendor, in the event

the vendor even after receipt of money denies execution of sale deed inasmuch as it is specifically alleged by the informant that the signature appears in the sale deed are forged one and not of the informant vendor. Therefore, as held in Amit Kapoor (supra) even the sale deed submitted with the petition prima facie establishes offence of forgery. This Court is of also of the view that the materials relied upon by the accused cannot overrule the factual assertion of the informant inasmuch as the sale deed annexed donot contain signature of the vendor in all the pages and this Court cannot ascertain whether the allegation that the informant has not put his signature and signature was forged one and the same is subject matter of investigation.

(ii) Even if the other allegations like trespass and forceful dispossession are taken at its face value, the same prima constitute the offences. This Court is of the view that there is no impeachable materials are placed before this Court the falsify the allegation made in the FIR in question to enable this Court to exercise its inherent power inasmuch as in the case of Amit Kapoor (supra) itself relied on by Mr. Choudhury, it is clearly mandated that while exercising power under Section 482 the Court cannot take into consideration any external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court is to consider the record and documents annexed therewith by the prosecution.

(iii) In the case in hand, in view of the specific allegation of forgery and physical assault specific allegation of trespass and dispossession conspiracy by sons and son-in-law etc. and taking note of the settled proposition of law, as discussed hereinabove, this Court is of the unhesitant view that a prima facie case under Sections 120(B)/406/409/420/468/471 of IPC are made out and police investigation should not thwart at this stage inasmuch as through a proper investigation it can be established whether the signatures are forged are not and whether other offences as alleged are committed or not.

(iv) Coming to the pendency of the civil suit which was lodged for cancellation of the alleged deed, in the considered opinion of this Court cannot be a ground for quashing of FIR and complaint more particularly in the given facts of the present case. Even if after investigation, it is found that the allegations made are correct, a declaratory suit for cancellation of the sale deed being forged one and recovery of possession shall be necessary, in the given facts of the present case and the same could be done through a decree of Civil Court.

(v) In view of the aforesaid, this Court finds no merit in Criminal Petition No. 154/2021 and accordingly, same stands dismissed.

C. CR Case No. 458/2020:

(i) Now coming to the CR Case No. 458/2020 which is challenged under Criminal Petition No. 157/2021, this Court is of the view that in view of registration of the Kampur PS Case No. 225/2020 on the similar facts the learned magistrate should exercise its power under Section 210 of CrPC. Accordingly, it is directed that the

Magistrate shall take necessary action under Section 210 of CrPC so far relating to the CR Case No. 458/2020.

D. CR Case No. 03/2020:

(i) Coming to the similar course of action should be done in respect of CR Case No. 03/2020 which is under challenged in Criminal Petition No. 152/2021 as the allegations are similar.

E. CR Case No. 02/2021 and CR Case No. 314/2021:-

I. As the learned counsel for respondent No. 2 submits that these two-complaint petition under challenged in Criminal Petition 156/2021 and Criminal Petition No. 153/2021 are similar to that of Kampur PS Case No. 225/2020 and CR Case No. 458/2020 and if this Court allows the proceeding of the aforesaid two cases, no cause of action shall survive for CR Case No. 02/2021 and CR Case No. 314/2020, and accordingly, in view of dismissal of Criminal petition No. 154/2021, nothing survives to be adjudicated in this two criminal petition and accordingly, the same stands closed and the allegation made in the complaint/ FIR in this two cases may be treated as a statement recorded under section 161 CrPC.

II. It is submitted that though this Court while issuing notice stayed the further proceeding of CR Case No. 458/2020 and CR Case No. 03/2021, however, during pendency of this petitions, the CR Case No. 458/2020 and CR Case No. 03/2021, were dismissed for default, which is not permissible under law and the same is palpably wrong, accordingly, this Court in exercise of the power under Section 482 of Cr.P.C., holds that such decision of dismissal for non prosecution during the operation of stay of the further proceeding of the said CR case ordered by a superior Court is interfered with.

III. Accordingly, the Criminal Petition No. 157/2021 and Criminal Petition No. 152/2021 are dismissed for the reason discussed hereinabove and the Criminal Petition No. 154/2021, Criminal Petition No. 156/2021 and Criminal Petition No. 153/2021 are closed being infructuous.