(2012) 09 GAU CK 0108

In the Gauhati High Court

Case No : Criminal Petition No. 510 of 2012

Shri Kalyan Kr. Sarma APPELLANT

Vs

The State of Assam RESPONDENT

Date of Decision : 12-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120(B), 143, 147, 352, 379

Citation : (2013) 1 GLT 141

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

Bench : Single Bench

Advocate : B.M. Choudhury, Mr. U. Choudhury and Mr. M.K. Das, for the Appellant; B.S. Sinha, Assistant Public Prosecutor, Assam, for the Respondent

Final Decision : Allowed

Judgement

P.K. Musahary

1. Heard Mr. B.M. Choudhury, Learned Counsel for the petitioner and also Mr. B.S. Sinha, learned Addl. Public Prosecutor, Assam. By filing this application u/s 482 read with Section 397 of the Cr.P.C., 1073 the petitioner is praying for setting aside/quashing the charge sheet being charge sheet No. 251/2012 in GR Case No. 9484 of 2009 arising out of Dispur P.S. Case No. 1383 of 2009.

2. The aforesaid charge-sheet was submitted against 10(ten) persons including the present petitioner. An FIR was filed by one Smti Hardeep Kaur Sondhi, wife of late Tej Pal Singh Sondhi with the Officer-In-Charge, Dispur Police Station on 2.9.2008 which was registered as Dispur P.S. Case No. 1383/09 under Sections 120(B)/468/447/506/506 IPC. It has been stated in the FIR that the informant''s family owned and possessed a plot of land measuring 4 Bighas covered by Dag No. 209, K.P. Patta No. 52 at revenue village Rukmininagar under Beltola Mouza in the District of Kamrup(M) adjacent to the Down Town Hospital. From the aforesaid plot of land 2 Bighas 2 Kathas of land was sold to two different buyers

and the rest was still belonging to informant''s family. It is alleged that taking advantage of long absence from Guwahati some miscreants fraudulently executed and registered sale deed in the names of her father-in-law and her deceased husband, who was an Advocate of Gauhati High Court. It is also alleged that the miscreants started construction of boundary wall without her knowledge and having come to know about it from reliable source, she went to prevent the construction works but the miscreants threatened her with dire consequences compelling her to file the FIR.

3. After completion of the investigation the aforesaid charge-sheet was laid. The I O had stated in the charge-sheet that during investigation the I O inspected the place of occurrence, interrogated local witnesses and examined the disputed records of the land in dispute in the revenue circle office. He also examined the related sale deed and found that informant''s husband Tejpal Singh Sondhi sold 5 Kathas of land out of the disputed land by executing two sale deeds, being sale deed No. 5159 dated 4.10.93 and 40077 dated 9.7.93 to one Sri Swapan Kumar Medhi of North East Associates Construction Company and another to one Billa Kr. Brahma respectively. At the later point of time younger brothers of Tejpal Singh Sondhi namely Amrit Singh Sondhi and Hardeep Singh Sondhi sold two kathas of land to North East Associates Construction Company vide Deed No. 3046 dated 6.6.97. In the said Deed it is mentioned that the Sondhi Family earlier sold 3 Bighas of land out of total 4 Bighas of land. As per Chitha obtained from the office of the revenue circle officer the sondhi family had no land at the place as mentioned in the aforesaid Deed. The said Deeds No. 5159 dated 4.10.96 and Deed No. 3046 dated 6.6.97 have been furnished with the charge sheet. After positive result/report given by the FSL on the disputed signatures of Hardeep Singh Sondhi and Amrit Singh Sondhi along with other signatures in the Deed, the complaint lodged by the informant did not take the way as per her wish but during investigation some different facts came to light in respect of the land.

4. In further investigation the I O found that North Eastern Associates Construction Company Limited sold two kathas of land to one Surma Real Estate Pvt. Company Limited vide Deed No. 3295 of 1998 dated 27.5.1998 and another plot of 3 kathas of land to the same company vide deed no. 3294 of 1998. The accused Sri Billa Brahma also sold 2 kathas of land to the said Surma Real Estate Company Limited and as such the entire plot of the land was purchased by the said Surma Real Estate Company Limited. The Managing Director Sri Biplab Seal purchased the aforesaid land on behalf of the Surma Real Estate Company Limited and he became the owner of the disputed land but in the meantime the said Biplab Seal had died in an accident on 4.3.2010.

5. During investigation it came to light that Sri Debajit Singh @ Debu, son of Tejinder Singh, resident of Zoo Road, Guwahati, house No. 88 along with Sri Kalyan Sarma (present petitioner) conspired and dishonestly represented one Mridul Saikia as Biplab Seal and transferred 7 kathas of land in dispute which

was in the name of Surma Real Estate Company Limited situated at Rukminigaon under Beltola mouza bearing dag No. 209 and Patta No. 52 to Debajit Singh vide a forged Deed No. 7930/08. Thereafter Debajit Singh got his name entered in the land record for the entire 7 kathas of land. Later on Debajit Singh transferred 5 kathas 11 lechas of land to one Pradip Borbora vide Deed No. 13557/08 dated 11.11.08 and also transferred a plot of land measuring 7.06 ''are'' to one Surajit Medhi vide Deed No. 2877/09. Thereafter Surajit Medhi sold the land to one Pradip Borbora vide deed No;. 2581 dated 11.5.2010. Presently, according to I O, the disputed land seems to be in the possession of said Pradip Borbora. Sri Debajit Singh before handing over possession of the land to Pradip Borbora used two forged documents and muscle power to get the possession of the land from Surma Real Estate Company Limited. At that relevant point of time, one Kamal Uddin Laskar who was a caretaker of the land lodged an FIR before Dispur Police Station, being case No. 1201/08 under Sections 143/447/427/352/379 IPC when the said Debajit Singh along with his men numbering about 30 tried to grab the land on 16.9.2008. In this regard, a case was registered and investigation was made.

6. During investigation of the said case, according to the I O accused Debajit Singh and Kalyan Sarma along with other accused persons, conspired for illegal gain by cheating and fraud presenting Mridul Saikia as duplicate Biplab Seal, Managing Director of Surma Real Estate Company Limited and got the Deed No. 7930 dated 27.5.08 executed and also got the disputed land bearing dag No. 209 K.P. Patta No. 52 transferred in the name of Debajit Singh from Biplab Seal and therefore charge-sheet was submitted against Debajit Singh, Kalyan Sarma and Miridul Saikia for committing offence u/s 120(B)/420/418/468/471/147/506 IPC. The accused persons after getting the land transferred in their names, conjointly, being armed with weapons proceeded to take possession of the land for illegal gains and sold the aforesaid land in the name of Sri Pradip Borbora and Surajit Medhi. The aforesaid allegations, according to I O would be proved by the evidence of witnesses and further more by Deed No. 14329/08, Deed No. 2877/09, Deed No. 13557/08 and other Deeds and the opinion of the forensic experts who would prove the similarities of signatures of Debajit Singh and Mridul Saikia.

7. The subsequent portion of the charge-sheet has no relevance to the present accused petitioner.

8. The Apex court has underlined the circumstances under which the High Court, in exercise of power u/s 482 Cr.P.C. can quash the complaint or the criminal proceeding. The leading case in this regard is State of Haryana and others Vs. Ch. Bhajan Lal and others, . In paragraph 102 of the Judgement rendered in the said case, the said circumstances have been underlined. There are as many as seven such circumstances. For the purpose of the present case, circumstances No. 1 and 3 would be relevant, which are reproduced 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 in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2)....

(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)....

9. Before the decision in Bhajanlal (supra) the Apex Court in R.P. Kapur Vs. The State of Punjab, summarised some categories of cases where inherent power could and should be exercised to quash the proceeding. The categories as mentioned therein are (1) where it appears that there is a legal bar against the institution or continuance e.g. want of sanction (2) where the allegation in the first information report or complaint taken at its face value and accepted in their entirely do not constitute offence alleged; (3) where the allegation constitute an offence but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

10. A conjoint reading of the decisions in R.P. Kapur''s case and Bhajanlal''s case (supra) would lead to a conclusion that the court has to first look at the FIR or the complaint filed against the accused whether circumstances as mentioned in the aforesaid case exist. For the purpose of scrutiny, examination and coming to a conclusion it is felt necessary to reproduce the FIR hereunder:

To

Date- 02.09.08

The Officer in-charge, Dispur Police Station, Dispur, Guwahati-6.

Sub: First Information Report.

Sir,

With due respect and humble submissions I beg to lay before you the following few lines for favour of your information and the appropriate action.

That Sir, our family had owned and possessed a plot of land measuring 4 bighas, covered by Dag no. 209, K.P. Patta No. 52 at the revenue village Rukminigaon under Beltola Mouza in the district of Kamrup, which is adjacent to the Down Town Hospital.

That, out of the aforesaid plot we had sold 2 bighas 2 kathas to two different buyers and the rests are still belong to our family.

That, getting the chance of long absence from Guwahati some miscreants have fraudulently made some registered Sale Deeds in the names of my deceased father in law and my deceased husband, who was also an Advocate of the

Gauhati High Court. The enclosed copy of my letter to the Dy. Commissioner, Kamrup (Metro) will describe in details.

That recently these miscreants have started construction of Boundary wall without our knowledge. Having the information from a reliable source when I had gone to prevent the construction works they threatened me for dire consequences; for which I have been compelled to file this FIR before your honour.

It is, therefore, prayed that your honour would be pleased to enquire the matter and take the necessary action at the earliest.

With kindest regards.

Sincerely yours, Sd/ Hardeep Kaur Sondhi (Mrs. Hardeep Kaur Sandhi) Uday Path, Zoo-road, Guwahati-781003.

Copy to : The Supdt. of Police, (City), Panbazar, Guwahati.

Received and registered Dispur PS case No. 1383/09 u/s 120(B)/468/ 420/447/506 IPC.

Sd/Illegible Officer in Charge Dispur Police Station

11. The informant is the wife of late Tez Pal Singh Sondhi and one of the family members claimed to have been owning and possessing the land in question. The informant''s family, out of 4 bighas of land sold 2 bighas 2 kathas to different persons and rest are still in the possession of the family. The informant''s husband himself was an Advocate of the Gauhati High Court, some miscreants have fraudulently registered some sale deeds in the name of her father in law and her husband. According to FIR the miscreants have started construction of boundary wall without the knowledge of the family. Names of the miscreants have not been mentioned in the FIR. There is no indication in the FIR that the present petitioner is involved in the alleged offence or he was implicated by any witness examined by the IO concerned. The FIR discloses no prima facie case against the present accused petitioner. Even in the investigation no case was found against him. From the records it is found that the I O by a letter/report dated 24.1.2011 informed the Officer-In-Charge Dispur Police Station that "during the course of investigation the complaint lodged by the informant Smti Hardeep Kaur Sondhi is found a mistake of fact and accordingly the said case is submitted in FR as mistake of fact after receiving proper approval". As per the aforesaid report of the I O, there was no scope for proceeding further against the accused persons, including the petitioner. However, I O has stated in the report that in the course of investigation another fact came to light that one Debajit Singh, son of late Tejinder Singh of R.G. Baruah Road, Guwahati got the said plot of land transferred in his name through a fraudulent transaction with one Sri Mridul Saikia, son of Rebakanta Saikia of Jorhat who impersonated Biplab Seal and got the land transferred through sale deed No. 7930 dated 27.5.08 and after this fraudulent transaction Debajit Singh again sold the plot to one Sri Pradip

Borbora through sale deed No. 13557 dated 11.1.08. On the basis of the said report of the I O, another case, being Dispur P.S. Case No. 152/11, was registered on 24.1.11 u/s 419/420/468/471 IPC. It also appears from record that the F.R. submitted in connection with earlier Dispur P.S. Case No. 1383/09 u/s 120(B)/468/420/506 IPC was not accepted by the learned CJM, Kamrup, Guwahati and it was directed by him to reopen the said case and amalgamate the earlier Dispur P.S. Case No. 1383/09 with the later Dispur P.S. Case No. 152/11. Accordingly, both these cases were investigated resulting into submission of charge-sheet on 9.5.2012 against 10(ten) accused persons including the present petitioner which is under challenge in this petition.

12. Now I would like to closely peruse and examine the charge-sheet to find out whether there is any material or evidence against the present petitioner to proceed against him. I have already narrated the relevant part of the charge-sheet. It is mentioned in the charge-sheet that during investigation of the case, the accused Debajit Singh and Kalyan Sarma along with other accused persons conspired for illegal gain by act of cheating and fraud through Mridul Saikia, who represented as Biplab Seal, Managing Director, Surma Real Estate Pvt. Company Limited and executed the deed No. 7930 dated 27.5.2008 and transferred the disputed land bearing dag No. 209, K.P. Patta No. 52 in the name of Debajit Singh from Biplab Seal. It is further stated in the charge-sheet that as the accused person has not been satisfied only with transferring the land in their name they jointly, being armed with arms and weapons went to take possession of the land and for illegal gain sold the aforesaid land in the name of Pradeep Brahma and Surajit Medhi.

13. It appears that the petitioner and other accused persons have been implicated apparently on the basis of evidence/statement of said Mridual Saikia, who represented/ impersonated Biplab Seal and got the sale deed registered, but there is no material disclosed by him except the statement to that effect. The question arises whether the allegation is absurd and unacceptable in the facts and circumstances of the case. From the record of the case it is found that the petitioner filed a complaint case No. 921C/2009 against the co-accused Debajit Singh u/s 138 of the Negotiable Instrument Act, 1881 alleging inter alia that Debajit Singh borrowed a sum of Rs. 4 lacs in cash from the petitioner. On demand the accused Debajit Singh issued a cheque bearing No. 148738 of Assam Gramin Bikash Bank, Fancy Bazar Branch for an amount of Rs. 4 lacs on 25.11.08 in favour of the petitioner but when he deposited the cheque in Central Bank of India, Dispur Branch on 16.12.08 it was dishonoured due to insufficient fund. The fact of dishonour of cheque was informed to the accused Debajit Singh on 18.12.08. He requested the petitioner to deposit the cheque after few days. But the cheque was dishonoured when it was deposited again in the said bank due to insufficient fund. The said cheque was dishonoured again for the 3rd time on 15.1.09 for the same ground. The petitioner then issued and served notice under the Negotiable Instrument Act through his counsel on 20.1.09 and when he received no response, filed the complaint petition against the accused Debajit.

In this connection before filing the above complaint petition, he lodged an FIR on 7.11.09 with the Officer-In-Charge, Dispur P.S. which was registered as Dispur Police Station Case No. 19/09 u/s 406/420 IPC. In the said FIR the petitioner mentioned about the borrowing of Rs. 4 lacs from him by Debajit Singh and his promise to sell a plot of land which was in his own possession under Beltola Mauza at Rukminigaon bearing Khiraj Myadi Patta No. 49/52 (old)/ 530(New) under dag nos. 203/209 (old)/876 (new), totalling 2 kathas for an amount of Rs. 80 lacs. The petitioner paid Rs. 40 lacs to accused Debajit, through a registered deed of agreement but the accused Debajit sold the said land to one Sri Pradeep Brahma through registered sale deed. Having come to know about the said fact the petitioner asked the accused Debajit to return the advance amount of Rs. 40 lacs and also the amount of Rs. 4 lacs paid earlier, but he refused to return the same. The accused even refused to meet the petitioner and hatched a conspiracy to mis-appropriate the aforesaid amount. From the records made available before this court, I could not find out the result of the FIR lodged by the petitioner, although it was registered and investigated. The petitioner having no other alternative filed a Title Suit being T.S. No. 28/09 against the accused Debajit Singh which is pending in the court of Civil Judge (Sr. Division No. 2) at Guwahati. The petitioner has stated in paragraph 8 of this petition that charge-sheet in question was laid by the investigating agency without conducting any investigation and taking into consideration about this aspect and also the fact that petitioner himself is a sufferer of the fraudulent act of accused Debajit Singh.

14. While amalgamating Dispur P.S. Case No. 1383/09 with Dispur P.S. Case no. 152/11, the prosecution should have requested the CJM, and obtained an order of amalgamation of Dispur P.S. Case No. 19/09 filed by the petitioner with the said two cases as they are very much related to each other inasmuch as the subject matter of dispute is the said plot of land. It appears that the investigation was done in an improper manner. The I O has made no reference to the police case filed by the petitioner which was registered as Dispur P.S. Case No. 19/09. There is also no reference to the stage or result of investigation, if any investigation was made and completed.

15. The charge-sheet does not reflect that any part of the land in dispute has been transferred to the petitioner or he has been in possession of the same by virtue of agreement/sale deed executed by accused Debajit in favour of the petitioner. The charge-sheet also does not reflect that due to fraudulent execution of sale deed by misrepresenting or impersonating Biplab Seal by Mridul Saikia, the petitioner could possess any portion of the land in question or it was transferred to the name of the petitioner. But it is certain that petitioner lodged the FIR against the accused Debajit Singh informing the police about the act of cheating, fraud and false promise of accused Debajit Singh to sell the land and taking of an amount of Rs. 40 lacs as advance and 4 lacs as loan without bothering to complete the sale process and handing over the possession of the land to petitioner. The accused Debajit Singh, to avoid payment/return of the said amount refused to meet the petitioner. Under such circumstances it is quite

absurd that the petitioner would be a party to the fraudulent act of registering a sale deed by impersonating Biplab Seal through Mridul Saikia for transferring the land in question through Pradip Borbora. Participation of the present petitioner in the criminal conspiracy with the accused Debajit Singh does not arise inasmuch as he was/is yet to receive back the said amount of Rs. 44 lacs from Debajit Singh. It is unbelievable that a person who has suffered a loss of an amount of Rs. 44 lacs would take the risk of hatching criminal conspiracy with the accused Debajit.

16. It is an admitted fact that both accused Debajit and Mridul Saikia are absconding. The accused Debajit, if the allegation made by the petitioner in his FIR is to be believed, there is nothing unnatural that he, to avoid return of the aforesaid amount of Rs. 44 lacs, making false allegation about participation of the petitioner with them in the criminal conspiracy and fraudulent act in using the service of accused Mridul Saikia for impersonation of Biplab Seal (owner of the land by virtue of earlier sale deed) and implicating the petitioner unnecessarily to put him under harassment.

17. Apparently both in the FIR as well as in the charge-sheet no offence has been disclosed against the present accused petitioner. The court has already examined the question of facts involved in this case. The facts involved are that the first FIR lodged by Mrs. Hardeep Kaur Sondhi has been found baseless. The second FIR i.e. Dispur P.S. Case No. 152/11 was lodged by the IO of the earlier police case. This second case has been amalgamated with the first case. The prosecution mis-directed itself in not amalgamating the 3rd police case lodged by the petitioner. The prosecution also misdirected itself in not completing investigation in respect of case registered on the basis of FIR lodged by the petitioner. There is no material to show that the 3rd FIR lodged by the petitioner is baseless or false. The petitioner could be proceeded against in the present case provided it is found that the allegation of being cheated by the accused Debajit on false promise of transferring the land in question by sale found to be false. Nothing is found on record that the FIR containing allegation of cheating against the accused Debajit Singh is false and baseless.

18. In KLE society (supra) it has been held that there should not be meticulous analysis of the case before trial to find out whether the case would end in conviction or acquittal but the complaint has to be read as a whole. If this law is to be applied, the prosecution is bound to place the entire facts of the case. The charge sheet has made no reference at all to the FIR lodged by the accused, his case filed under the NI Act and the Title Suit. It is well understood that the IO, while submitting the charge-sheet in question, did not take into account the cases initiated by the petitioner through police by way of filing FIR, registered as Dispur P.S. Case No. 19/09 and the cases filed in the courts of law as mentioned above. The possibility of making false allegation with malafide intention by the accused Debajit Singh cannot be ruled out as discussed earlier.

19. While it is an accepted position of law that the court exercising power u/s

482 Cr.P.C., should not act like a court of appeal and/or revision and should not go into the merit of the case to find out the guilt or innocence of the accused person, the law requires that there has to be atleast some materials implicating the accused and no congnizance could be taken merely on the basis of suspicion. Looking at the manner in which the investigation was conducted and directed by the prosecution, this court has no doubt in mind that the prosecution entertained suspicion on the petitioner without even an iota of material indicating his guilt. In this regard, I rely on the decision rendered by the Apex Court in Harish Chandra Prasad & ors -vs- State of Jharkhand & another, reported in (2007) 15 SCC 494.

20. What I have further noticed in the present case is that the prosecution implicated and charge-sheeted the petitioner without making any concrete allegation against him. It has simply chosen some expressions such as fraud, fraudulent, conspiracy, cheating etc. and quoted sections 120(B)/420/447/506 and 468 IPC. I have already pointed out earlier that there was no possibility on the part of the petitioner to indulge himself in criminal conspiracy. As regards the offence u/s 420 brought against the petitioner the ingredients of cheating as defined u/s 415 IPC are lacking. The ingredients of cheating are that there should be (i) a deception of a person either by making a false or mis-leading representation or by other action or omission and (2) fraudulently or dis-honestly inducing any person to deliver any property or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit. Here in the present case it is the petitioner himself who suffered loss of Rs. 44 lacs due to false promise of the accused Debajit. There was no false representation by the petitioner or sale deed executed and delivery of possession of the land in question. These things never happened in the present case and the petitioner cannot be implicated and charge-sheeted under this section of law. So also the case in respect of allegation u/s 468 IPC against the petitioner. Section 468 IPC relates to punishment for committing forgery for the purpose of cheating. Forgery has been defined u/s 466 IPC. The case actually relates to making of false documents. What amounts to making false document is specified in Section 464 IPC. Section 464 IPC is quoted below:

464. Making a false document.- [A person is said to make a false document or false electronic record-First.-Who dishonestly or fraudulently-

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any [electronic signature] on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature],

with the intention of causing it to be believed that such document or part of document, electronic record or [electronic signature] was made, signed, sealed executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

....

21. In this regard, in Devendra and Others Vs. State of U.P. and Another, , it is held that making of any false document in view of definition "forgery" is the sine qua non and there should be execution of documents with intention of causing it to be believed that such document inter alia was made by the authority of a person by whom or by whose authority he knows that it was not made. The present petitioner has not been shown as party to execution in sale deed or document for transfer of land in question to himself or to any other person and why should he be a party to a conspiracy hatched by the accused Devajit Singh in making a document transferring the land to some body else when he himself paid Rs. 44 lacs to accused Devajit Singh for purchasing the land. The petitioner himself being interested in purchasing the land by making a substantial advance money, there is no reason to think that he would be a party to the said conspiracy at his further loss and risk. There is no material at all to show that petitioner ever indulged in committing criminal trespass or intimidation within the meaning of sections 447 and 506 IPC. From the above discussions I find that the name of the present accused petitioner has been inserted in the charge-sheet and sent up for trial without any material collected during investigation which was not fairly conducted by the IO concerned in so far as it relates to the petitioner inasmuch the FIR lodged by him and the case registered on the basis of his FIR was not taken into consideration and the action taken so far in regard to the said P.S. Case has not been reflected in the charge-sheet under challenge. The petitioner would be put at unnecessary harassment if the present proceeding is allowed to continue and it would amount to abuse of the process of court and miscarriage of justice. It is, therefore, deemed fit and proper to quash and set aside the proceeding so far it relates to the present petitioner. The impugned charge sheet No. 251/2012 in GR case No. 9484 of 2009 arising out of Dispur P.S. Case No. 1383 of 2009, in so far as it relates to accused petitioner is concerned, is hereby set aside and quashed. The learned court below shall not proceed against the present petitioner. Petition stands allowed. Return the LCR forthwith.

