
(2011) 05 GAU CK 0035
In the Gauhati High Court
Case No : Criminal Petition No. 79 of 2011

Smti Heera Baruah

APPELLANT

Vs

Sri Piush Agarwal

RESPONDENT

Date of Decision : 31-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 482, 483
Penal Code, 1860 (IPC) — Section 34, 420, 506

Citation : (2011) 3 GLT 308

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : J. Roy, R. Borpurjari, S. Sarma, R. Hazarika, in Criminal Petition No. 79 of 2011, P. Kataki, S. Khataniar and D. Chakbrobuthy, in Criminal Petition No. 154 of 2011, for the Appellant; U. Bhuyan, Learned Sr. Counsel assisted by B. Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

B.D. Agarwal, J.—Both the Criminal Petitions, having arisen out of the same criminal proceeding are being disposed of by this common judgment.

2. The criminal petitions have been filed by two set of accused persons u/s 482 read with Section 397/401 of the Code of Criminal Procedure, 1973, seeking quashing of Complaint Case No. 3580 of 2010 under Sections 420/506 read with Section 34 of the Indian Penal Code, now pending in the court of learned Sub-Divisional Judicial Magistrate No. 1 (Sadar), Kamrup, Guwahati.

3. The Criminal Petition No. 79 of 2011 has been filed by one accused, whereas Criminal Petition No. 154 of 2011 has been filed by ten accused persons, out of twelve accused persons. In this way, one of the accused persons, namely, Sanjiv Lal Baruah is not a party in these proceedings.

4. Heard Mr. J. Roy and Mr. P. Kataky, learned Counsels for the petitioners in their respective cases. The complainant/ respondent was represented by Mr. U.

Bhuyan, learned senior counsel.

5. I have also gone through the complaint petition, initial statements of the witnesses and all other documents filed by the petitioners in the criminal petitions.

6. Since the maintainability of the criminal proceedings primarily rests upon the facts of the case, I deem it proper to discuss the facts of the present case, which are little bit peculiar. Factual matrix is as below:

7. The respondent herein purchased two plots of land vide sale deeds dated 28.07.2006 and 31.07.2006. Both the lands are contiguous to each other and covered by same Dag and Patta numbers. Although the land stood in the name of 25 co-pattadars, the sale deeds were executed by five persons on the basis of Power of Attorney. The sale deeds were preceded by execution of an agreement for sale. As per the recitation of the sale deeds, the respondent was put in physical possession of the land, which were vacant on the date of execution of sale deeds. Since there was mistake in the schedule of the land in the sale deed dated 28.07.2006, a rectification deed was executed on 30.08.2006.

8. After the formalities of transfer of title of land were over, the respondent noticed that three persons had occupied the land and they had started construction activities on their own. Accordingly, on 27.09.2006, the respondent filed Title Suit No. 199 of 2006 in the court of Senior Civil Judge, No. 2, Kamrup, Guwahati against the alleged trespassers, seeking a decree, inter-alia, for declaration of plaintiffs' right, title and recovery of khas possession of the land. In the said suit, five accused persons who had executed the sale deeds were also impleaded as proforma defendants. After filing of the written statement by the private respondents, the said suit was withdrawn on 25.03.2009. Instead of filing a fresh title suit, the respondent filed a money suit against the accused persons, seeking a decree to declare the sale deeds as null and void and for refund of sale consideration and compensation. The suit has been registered as Money Suit No. 80 of 2009 and pending in the Court of Civil Judge, No. 1, Kamrup, Guwahati. In the suit, the alleged trespassers have been impleaded as proforma defendants. The Money Suit was filed on 30.07.2009 and in this suit, the defendant No. 1, Smti Heera Baruah submitted her written statement on 10.11.2009. Nearly after one year of the filing of the written statement, complaint in the court of learned Chief Judicial Magistrate was filed on 04.10.10.

9. Mr. Roy, learned Counsel appearing in Criminal petition No. 79 of 2011 submitted that the criminal complaint has been filed with ulterior motive to pressurize the accused persons to settle civil dispute and wreck vengeance due to illegal encroachment and occupation of the suit land by unauthorised persons. The learned Counsel also submitted that the complaint has been filed nearly after 4 1/2 years of execution of the sale deeds and on this ground alone, the criminal proceeding deserves to be quashed. Referring to averments made in the civil suits as well as the recitation of the sale deeds, the learned Counsel submitted

that the vacant possession of the land was handed over to the respondent and as such, the accused persons cannot be prosecuted for the offence of cheating, just because the land was subsequently occupied by other persons. According to the learned Counsel, if there was any breach of contract, the same aspect can be looked into in the money suit. The learned Counsel submitted that the civil dispute cannot be given the colour of a criminal proceeding. In support of this submission, the learned Counsel cited few authorities from the Hon'ble Supreme Court.

9.1 With regard to the offence u/s 506 of the IPC, the learned Counsel submitted that the allegation is totally baseless and false in as much the accused persons could not have held out any threat after 4 1/2 years of the transfer of the land, more so after filing of the written statement in the money suit. Even otherwise, the allegation is vague in as much as the complainant has neither spelt out in the complaint petition as to who had threatened the complainant nor any specific nature of threat has been spelt out in the complaint and in the initial depositions.

10. Apart from attacking the complainant's conduct in lodging the complaint after 4 1/2 years, without bringing on record that the accused persons had intention to cheat the respondent at the time of execution of the sale deeds, learned Counsel for the petitioners submitted that, on the other hand, the petitioners have filed an FIR against the trespassers for occupying the land on the basis of a forged (Power of Attorney) sale deed, executed at the strength of forged.

11. Mr. Katakya, learned Counsel for the petitioners in criminal petition No. 154 of 2011 also sought for quashing of the criminal proceeding, albeit adding that whatever was done was done by the accused Smti Heera Baruah and all the remaining accused persons had practically no role in the sale of the land. The learned Counsel also submitted that initial negotiation was done by the complainant with accused Nos. 1, 6, 11 and the sale deeds were executed by the accused Nos. 1, 2, 5, 6 and 12. In other words, altogether six accused persons were directly involved in the transfer of land, whereas the complainant has impleaded twelve person in the criminal proceeding and that too without any explanation as to why the remaining co-pattadars have not been impleaded.

12. With regard to the delay in filing of the complainant, Mr. Bhuyan, learned Counsel for the respondent submitted that only after filing of the written statement by the accused No. 1 in the Money suit, the complainant was convinced that he had been deceived and cheated by the accused. The learned Counsel also submitted that the complainant was not given correct advice by his counsel and that is why different nature of suits were filed by the respondent. Mr. Bhuyan also submitted that litmus test to determine continuance of criminal proceeding is the existence of a prima facie case on the basis of averments made in the complaint petition and initial depositions. The learned Counsel also submitted that even if there are elements of civil dispute, continuance of criminal proceeding is not barred and this submission was made on the basis of Judgment

of the Apex Court given in Indian Oil Corporation Vs. NEPC India Ltd. and Others,

13. There is no dispute to the legal position that even if civil remedy is available, a criminal proceeding is maintainable. However, in this situation, the onus is upon the complainant to produce unimpeachable and evidence of sterling quality that the accused had a clear intention to cheat from very beginning. Even otherwise in the case of IOC (Supra), their Lordships also observed as below:

13. Any effort to settle civil dispute and claims, which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and discouraged.

14. The judgment of IOC (Supra) also came up for consideration before the Apex Court in the case of Inder Mohan Goswami v. State of Uttaranchal (2007) 12 SCC 1. In this case, their Lordships have held that the inherent power conferred upon the High Courts u/s 482 of the Criminal Procedure Code, can be exercised, inter-alia, to prevent abuse of the process of court and to do real and substantial justice. With regard to maintainability of criminal proceeding, the Apex Court has held that criminal prosecution should not be allowed as an instrument of harassment or for settling private vendetta or with an ulterior motive to pressurize the accused. In other words, the guidelines framed in the case of State of Haryana v. Bhajan Lal; (1992) Suppl (El-1) SCC 335 were reiterated. In the case of Hira Lal and Others Vs. State of U.P. and Others, Hon"ble Supreme Court again approved the observations made by the Apex Court in the case of R. Kalyani Vs. Janak C. Mehta and Others, in which one of the test to interfere in a criminal proceeding by High Courts was laid down in the following words:

It is furthermore well known that no hard -and- fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

15. There is a long list of authorities with regard to parameters of Section 482 of the Code of Criminal Procedure for quashing criminal proceedings. However, all these authorities centre around the guidelines laid by the Apex Court in the case of Bhajan Lal (Supra), with little amplification of the circumstances in which a criminal proceeding can be quashed. Amongst other grounds, a criminal proceeding can be quashed if it is made out by the accused persons that the criminal prosecution has been launched with malafide intention or if the proceeding is maliciously instituted with ulterior motive for wrecking vengeance or with a personal grudge or to persecute an innocent person. If any of these elements are seen, the existence of prima facie case will become otiose.

16. At this stage, it should also be mentioned here that there is no bar for the High Court to take into consideration the documentary evidence of the accused persons. In the latest judgment of the Hon'ble Supreme Court, rendered in the case of Harshendra Kumar D. Vs. Rebatilata Koley Etc., it has been held that consideration of defence at prima facie stage by the High Court under revisionary power or under inherent power is not absolutely barred. The relevant observations are extracted below for ready reference.

25. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction u/s 482 or for that matter in exercise of revisional jurisdiction u/s 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction u/s 482 or revisional jurisdiction u/s 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of then accusations. However, in an appropriate case, if on the face of the documents, -----which are beyond suspicion or doubt----- placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.

17. In the case before me, whatever documents have been filed by the petitioner are matters of record. In both the sale deeds, the respondent had declared that he had received and taken over the possession of the land. I have already mentioned earlier that two sale deeds were executed after a gap of few days, one on 28.07.2006 and the other one on 31.07.2006. Even thereafter, a rectification deed was executed on 31.08.2006. In para 8 of the title suit also, the complainant/ respondent had categorically admitted that plaintiffs were handed over the vacant and physical possession of the suit land. Not only that, the plaintiff also averred that after execution of the sale deeds, the plaintiffs had also assigned an employee to stay on the land and built a tin house, in addition to installing an iron gate. Similar statements about getting vacant possession of the land were also made in other pleadings. However, in the complaint petition, a different story was projected, alleging that when the complainant went to take over the possession of the land, he found that the land was occupied by one Jahid Ali, Kalim Ali and Ms. Asma Begum and on being asked, these persons told the complainant that the land was sold to them by the accused persons. Even if for a moment, the statement made in the complaint petition is taken at par, the complainant ought to have acted promptly to institute the criminal proceeding. However, instead of doing so, the complainant went ahead to become a party to the rectification deed on 31.08.2006 and thereafter, filed a title suit against the

aforesaid three numbers of trespassers.

18. I have already mentioned earlier that the assertion of the trespassers about the sale of the land to them by the accused persons is already under scrutiny in the FIR, lodged by Smti Heera Barua. In the said FIR, the aforesaid accused has alleged that Jahid Ali, Kalim Ali and Asma Begum have got their names transferred against the disputed land on the basis of forged documents. In fact, the accused persons had also filed a civil suit for declaring the documents of transfer in favour of the trespassers as forged and illegal. But the said suit was ultimately dismissed for default. Even otherwise, the FIR of the accused is still pending.

19. Be that as it may, there is no satisfactory explanation for filing of the complaint nearly after 4 1/2 years. Besides, this, the allegation of threat is also a vague one. Even otherwise, the complainant has already filed a money suit seeking refund of the payment made to the vendors and for compensation. The complainant is also at liberty to pursue his remedy in the civil court or other authorities against the alleged trespassers. He may also become a party in the FIR, lodged by accused Smti Heera Barua at Latasil Police Station on 01.04.2006.

20. In view of the aforesaid facts and having analyzed all the aspects of the matter, I hold that continuance of criminal proceeding against the petitioners is not warranted. If the same is allowed to continue, it would amount to abuse of the process of law.

21. In the result, both the criminal petitions stand allowed. The complainant 's case is hereby quashed.