



GAHC010041642018

Page No.# 1/10



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./191/2018

JATIN BORUAH
S/O SRI MISHI BORUAH, R/O HIJUGURI, PO HIJUGURI, AND PS AND DIST.
TINSUKIA, ASSAM

VERSUS

SHIV KUMAR SAH AND 4 ORS.
S/O LATE SANTARAM SAH, R/O NEW COURT ROAD, PO HIJUGURI AND PS
AND DIST. TINSUKIA, ASSAM, PIN-786125

2:SANTA SAH
SRI SHIVE KUMAR SAH
R/O NEW COURT ROAD
PO HIJUGURI AND PS AND DIST. TINSUKIA
ASSAM
PIN-786125

3:SANDIP SAH
S/O SRI SHIV KUMAR SAH
R/O NEW COURT ROAD
PO HIJUGURI AND PS AND DIST. TINSUKIA
ASSAM
PIN-786125

4:SRI BIBEK DAS
S/O SRI BINOY RANJAN DAS
R/O WEST SRIPURIA
TINSUKIA
PO
PS AND DIST. TINSUKIA
ASSAM
PIN-786125



5:DHANPAT SHARMA
S/O LATE RAMNARAYAN SHARMA
R/O HIJUGURI
PO HIJUGURI AND PS AND DIST. TINSUKIA
ASSAM
PIN-78612

Advocate for the Petitioner : MR. A K GUPTA

Advocate for the Respondent : MR. S ISLAM (R1 TO 5)

**BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

JUDGMENT & ORDER

Date : 28.07.2022

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Heard Mr. AK Gupta, learned counsel appearing for the petitioner/ complainant and Mr. S Islam, learned counsel for the respondents No. 1 to 5.

2. This petition under Section 482 CrPC has been filed by the petitioner praying for setting aside and quashing of the order, dated 18.11.2017, passed by the learned Additional Sessions Judge, Tinsukia in Criminal Revision No. 03 (1)/2017 whereby the order dated 18.11.2016 passed in CR 91 ^C/2019 by the learned JMFC, Tinsukia taking cognizance of offences against the opposite parties under Sections 120B/199/420/423 of the IPC was set aside.

3. The petitioner/ complainant's case precisely is that he filed a complaint case against the respondents and another, namely, Manoj Kumar Sharma, on 27.10.2016, in the Court of learned Chief Judicial Magistrate, Tinsukia alleging, *inter-alia*, that on 07.01.2013, the accused Sri Manoj Kumar Sharma executed a Power of Attorney registered vide Deed No.8/2013 before Senior Sub-Registrar, Tinsukia in favour of Bikash Jyoti Baruah thereby authorizing and empowering him to sell his land measuring 0 Bigha 2 Kathas 10 Lessas, covered by Dag



No.189 of periodic Patta No. 11, situated at Dihingia Gaon, Mouza- Bogdung, District-Tinsukia, Assam to intending purchaser(s) and to do all the acts and deeds for giving effect of sale and in pursuance thereof on 12.03.2013, the said Bikash Jyoti Baruah entered into an Agreement for sale with the complainant for the aforesaid land and received Rs.75,000/- as advance, out of fixed consideration of Rs.1,00,000/- and handed over the physical possession of the said land to the complainant well to the knowledge of Manoj Kumar Sharma. However, the said attorney did not execute the sale deed by assigning this and that reason and in the meantime, the opposite party No.1 taking advantage of the situation tried to dispossess the petitioner. Having no alternative, on 10.02.2014, the petitioner filed TS No.6/2014 in the Court of learned Munsiff No.1, Tinsukia praying for Specific Performance of contract, injunction restraining the opposite party No. 1 or any other person claiming through him and the learned Munsiff No.1 vide order, dated 10.02.2014 passed in Misc. (J) Case 8/2014 directed the parties to maintain status-quo as on 10.02.2014. In the said suit, Bikash Jyoti Baruah entered appearance for himself as well as for Sri Manoj Kumar Sharma as an attorney and the Opposite Party No.1 also entered appearance and filed their reply. The said opposite party No.1 in his reply stated that the Power of Attorney executed in favour of said Bikash Jyoti Baruah was revoked by said Manoj Kumar Sharma and a fresh attorney was executed in favour of opposite party No.3 and also filed Misc. (J) Case No.3/2015 alleging violation of the status quo order dated 04.02.2014, which came to be dismissed on 02.09.2015. Thereafter, the opposite party on 23.10.2016 demanded the possession of the said land. The petitioner smelling foul play caused an enquiry and found that the Opposite party No.3 had sold the land by executing a sale deed bearing no.1223 of 2014 in favor of the Opposite party No.2 by making false declaration and affidavits before the concerned authority inspite of the *status quo* order and in collusion with the other opposite parties and Manoj Kumar Sharma and thereby prayed for taking cognizance of the offences under Sections 120B/193/199/420/423 of the IPC. The said complaint was registered as CR Case No.91 C/2016. Thereafter, on 27.10.2016, the petitioner was examined on oath under Section 200 CrPC and on the same day, the petitioner also filed Petition No. 3062/2016 under Section 91 of CrPC praying for calling the records of Misc. (J) Case No.8/2014 and Misc. (J) Case No.3/2015 from the court of learned Munsiff No.1. Tinsukia as well as record of Sale Permission No.TDA (T)

188/2000/LS/Pt/189 dated 19.06.2014, Sale Permission No.TSK/LSP/1209/2014/Tsk-446 (A) dated 21.07.2014 from the office of the Tinsukia Development Authority, Tinsukia and Deputy Commissioner, Tinsukia The aforesaid prayer was allowed fixing 17.11.2016 for record and further enquiry. On 17.01.2018, the CW-1 was examined and thereafter, having *prima facie* satisfied with the existence of sufficient materials for proceeding with the trial, the learned Court below vide order, dated 18.11.2016, took cognizance of the offences under Sections 120B/199/420/423 of the IPC against the opposite parties and one Manoj Kumar Sharma and summons were accordingly issued fixing 31.12.2016 for appearance.

4. Being aggrieved by the aforesaid order, the respondent preferred a revision being Criminal Revision No.03 (1)/2017 in the Court of learned Sessions Judge, Tinsukia and on being transferred, the learned Additional Sessions Judge, Tinsukia, by judgment and order, dated 14.12.2017 allowed the revision setting aside the order, dated 18.11.2016.

5. Mr. AK Gupta, learned counsel appearing for the petitioner/ complainant submitted that the learned revisional court has acted beyond its power and jurisdiction vested on it under Section 397 CrPC by setting aside the order of taking cognizance of the said offences, having effect of quashing and setting aside the entire proceeding so far as it relates to the respondents. Mr. Gupta submitted that the learned revisional Court ought not to have held that the dispute is of civil nature and that the petitioner/ complainant failed to make out a *prima facie* case under Sections 120B/199/420/423 of the IPC against the respondents.

6. Opposing the petition, Mr. S Islam, learned counsel appearing for the respondents, submitted that a Title Suit being T.S. No.6/2014 is pending between both the parties in the Court of learned Munsiff No.1 at Tinsukia over the same disputed plot of land where the said learned court in Misc. (J) case No.8/2014 directed to maintain *status quo*. However, the petitioner/complainant instead of bringing an action for violation of the aforesaid injunction order under Order 39, Rule 2 (A) CPC filed the complaint case against the respondents giving the dispute a criminal colour to put undue pressure on them to settle the suit. Mr. Islam, therefore, submitted that the learned revisional court has rightly set aside the order of the learned Magistrate taking cognizance of the aforesaid offences against the respondents.

7. I have considered the respective submissions of both sides and perused records

including the record of Criminal Revision No.03 (1)/2017.

8. A perusal of the complaint petition, which was registered as CR Case No.91^C/2016, was filed on 27.10.2016, by the petitioner/ complainant against the respondents and another, namely, Manoj Kumar Sharma under Sections 120B/193/199/420/423 of the IPC, that is , after the learned Munsiff No.1 at Tinsukia, by order, dated 10.02.2014, directed both the parties to maintain *status quo* as on that day (10.02.2014) vide Misc. (J) Case No.08/2014 and the aforesaid injunction violation petition being Misc. (J) Case No.03/2015 in T.S No.06/2014 was dismissed on 02.09.2015. By filing the complaint case, the petitioner/ complainant has belatedly in the year 2016 initiated the criminal action roping the respondents into the alleged criminal acts committed on 19.06.2014, 21.07.2014, 24.07.2014 and 30.07.2014. Although the petitioner/ complainant has referred to T.S. No. 06/2014 and Misc.(J) Case No.08/2014 as well as Misc. (J) Case No.03/2015 pertaining to the disputed land in question in the complaint case , no copy of the plaint and orders passed by the learned Munsiff No.1 at Tinsukia are annexed to the instant petition for perusal of this Court to appreciate the case of the petitioner. The petitioner/ complainant emphatically contended the ground that the civil proceedings are different from criminal proceedings and urged upon the court to see only whether the allegations made in the complaint disclose criminal offence or not and no further , but in the context of the aforesaid facts of the case, where civil proceedings are referred to the background of the case, this Court is of the opinion that the aforesaid relevant documents are necessary for just disposal of the instant petition.

9. It is noticed that the learned Judicial Magistrate, First Class, at Tinsukia passed the order, dated 18.11.2016 in CR Case No.91^C/2016, after due enquiry under Section 200 CrPC, which is extracted herein below:

“18.11.2016

The complainant is absent with step. Cause shown is satisfactory. Prayer is allowed. On going through the materials on record, this Court is of the opinion that there is sufficient ground to proceed against the accused persons u/s 120B/199/420/423 IPC. As such cognizance of offences under the aforesaid sections of law is taken against the accused persons. Issue summons against the accused persons accordingly. The

complainant will take steps.”

10. Being aggrieved, the respondents preferred Criminal Revision No.03(1)/2017 and the learned Additional Sessions Judge No.2, Tinsukia by the impugned order, dated 14.12.2017, set aside the order, dated 18.11.2016 and thereby allowed the revision. The aforesaid order reads as under:

“14.12.2017

2. *Being highly aggrieved and dissatisfied with the impugned order, the revision petitioners, namely, Sri Shiv Kumar, Smti Santa Sah, Sri Bibek Das, Sri Dhanpat Sharma, among other things have drawn the attention to set aside the impugned order dated 18.11.2016 on the following among other grounds (i) For that the Learned A Bhattacharjee, JM 1st Class at Tinsukia has committed manifest error of Law as well as on facts by taking cognizance of the aforesaid case as such the impugned order dated 18.11.2016 is liable to be set aside and quashed (ii) For that the impugned order dated 18.11.2016 passed by Learned A Bhattacharjee, JM 1st Class, Tinsukia is improper, erroneous and bad on law. (iii) For that the finding arrived by the Learned lower Court is not based on the materials on the record and as such they cannot be treated as judicial findings and hence impugned order dated 18.11.2016 is liable to be set aside and quashed.(iv) For that, facts as stated in the complaint petition are of Civil Nature and the complainant has already filed a civil case being case no. Title Suit 6 of 2014 on the same subject matter which is pending before the court of Ld. Munsiff No.1 at Tinsukia at the stage of Cross of PW. (v) For that the complainant has filed this instant false and concocted case against the above named petitioners only with a view to create undue pressure upon the petitioners to settled Title Suit No.6 of 2014. (vi) For that, the Respondent/ complainant is not the owner of the disputed plot of land upon which a civil case was initiated by him against the petititoners of this instant revision petition. (vii) For that, the trial of the said title Suit Case No.6/14 is proceeding in the Court below and the same Court has taken the cognizance of the instant CR Case in gross violation of procedure of law and it is the misuse of power vested upon the Court. (viii) For that, the Ld.Court below without verifying the facts from record and making no enquiry proceeded to take the cognizance which is bad in law. (ix) For that, the entire dispute is a civil violation nature, and*

as such there is no ingredients in the complaint petition which might attract the provisions of section 120B/199/420/423 of the Indian Penal Code as such impugned order dated 18.11.2016 passed by Ld A Bhattacharjee, JMFC Tinsukia in CR Case No.91 ^C/2016 is liable to be set aside. (x) For that, in Misc. (J) 8 of 2014 arising out of Title Suit Case No.6 of 2014 the Ld. Munsiff No.1, Tinsukia has passed an order of status quo over the disputed land and the complainant instead of filing a petition under order 39 Rule 2 (A) of CPC has filed this false complaint case with a view to harass the petitioners as such impugned order dated 18.11.2016 passed by Ld A Bhattacharjee, JMFC Tinsukia in CR Case No.91 ^C/2016 is liable to be set aside. (xi) For that the learned lower court passed the cognizance order without following the rule of Law and hence the impugned order dated 18.11.2016 passed by the lower court is liable to be set aside and quashed. (xii) For that unless the operation of impugned order dated 18.11.2016 passed by by Ld A Bhattacharjee, JMFC Tinsukia in CR Case No.91 ^C/2016 is stayed during the pendency of the Revision petition, the petitioners shall suffer irreparable loss and injury. (xiii) For that this petition is made in the interest of justice.”

“10. In view of the above facts and circumstances, I am of the considered view that the dispute between the revision petitioner and the respondent as alleged in the complaint petition in CR 91^C/2016 is in civil nature and the respondent has failed to bring home the charge of 120B/199/420/423 of the Indian Penal Code. Accordingly, the revision petition is allowed on contest without cost. The order dated 18.11.2016 passed in CR 91^C/2016 is set aside herewith against the revision petitioners, namely, Sri Shiv Kumar Sah, Smti Santa Sah and Sri Sandip Sah, Sri Bibek Das and Sri Dhanpat Sharma.”

11. The Hon’ble Supreme Court in the case of *Vinod Raghuvanshi –vs- Ajay Arora & Ors* reported in 2013 AIR SCW 6660 has stated as under:

“19. It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the Court should not “kill a still born child”, and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance.

When a prosecution at the initial stage is to be quashed, the test to be applied by the Court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither the Court can embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor the Court should judge the probability, reliability or genuineness of the allegations made therein. Moreso, the charge-sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216, Cr. P.C..So, the order passed even by the High Court or this Court is subject to the order which would be passed by the trial Court at a later stage."

12. A perusal of the complaint petition along with the order, dated 18.11.2016, passed in CR Case No.91^C/2016 and the impugned order, dated 14.12.2017, passed in Criminal Revision No.03(I)/2017, it is revealed that the matter in dispute between the parties is directly and indirectly in issue in TS No.06/2014, but the criminal action is sought to be initiated against the respondents basically on the ground of dishonest intentions behind the alleged transactions detrimental to his legal rights. Surprisingly, Manoj Kumar Sharma, the accused No.1 in the complaint case against whom also the learned Magistrate took cognizance of the offences, has not been impleaded as one of the petitioners in the Criminal Revision No.03 (1)/2017 and even in the CR Case No.91^C/2016, Bikash Jyoti Baruah was not impleaded although allegations were made against them too, but confined to the allegations made against the respondents only. This pick and choose of persons to fasten with criminal liability keeping aside the role of the said two relevant persons make the whole criminal proceeding ineffective.

13. It may relevantly be pointed out that if upon examination of the complainant and/ or witnesses under Section 200 CrPC, the Magistrate is *prima facie* satisfied that a case is made out against the person accused of committing an offence then he is required to issue process. It may also be stated that civil and criminal remedies are not mutually exclusive, but clearly co-extensive. Therefore, in the criminal case, it is to be seen whether on facts of the case a criminal offence is made out or not .



14. In the instant case, it appears that the ownership of the disputed land was not legally transferred to the petitioner/ complainant either by its pattadar Manoj Kumar Sharma or his power of attorney holder Bikash Jyoti Boruah pursuant to execution of Agreement for sale with the petitioner receiving Rs.75,000/- as advance, out of consideration of Rs.1 Lakh. Therefore, the petitioner instituted TS No. 06/2014 for specific performance of the contract.

15. It is noticed that in the meantime, the adjacent resident respondent No. 1 namely, Shiv Kumar Sah demanded him to handover the disputed land to him claiming that he had purchased the said plot of land and on his enquiry, it came to light that his (respondent No.1) son, the respondent No. 3, namely, Sandip Sah executed a registered sale deed, after obtaining sale permission, in favour of his mother respondent No.2, namely Santa Sah, suppressing the fact of pendency of suit in respect of the said plot of land and in violation of the status quo order, dated 10.02.2014, passed in Misc. Case No.08/2014 arising out of TS No. 06/2014.

16. Thus, it is noticed that *prima facie*, the petitioner did not acquire the ownership of the said immovable property and as such, in the backdrop of the facts and circumstances, it cannot be inferred that there is *prima facie* case to proceed against the respondents under the aforesaid penal provisions of the Indian Penal code, but the whole dispute, as held by the learned revisional court, is civil in nature.

17. For the above stated reasons, this Court is of the opinion that no interference in the impugned judgment and order, passed by the learned revisional court is warranted.

18. Accordingly, the petition stands dismissed.

19. The interim order, dated 12.03.2018, is vacated.

Return the LCR.

The Criminal petition stands disposed of.

JUDGE



Comparing Assistant