



GAHC010223722021

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

**Case No. : Crl.Pet./797/2021**

SHAHANAZ AHMED AND ANR  
W/O ASHRAFUL BEPARI  
VILL- RAIPUR, P.S. GOLAKGANJ  
DIST. DHUBRI, ASSAM, PIN-783334

2: ASHRAFUL BEPARI  
S/O SAIOD ALI BEPARI  
VILL- RAIPUR PART-I  
P.O. RAIPUR  
P.S. GOLAKGANJ  
DIST. DHUBRI  
ASSAM PIN-783334

VERSUS

THE STATE OF ASSAM AND ANR.  
TO BE REP. BY THE LEARNED PP, ASSAM, GUWAHATI-01.

2:HAJIBAR RAHMAN  
S/O LATE SAMATULLAH SK.  
R/O VILL- BARUNDANGA P.S. TAMARHAT  
DIST. DHUBRI  
ASSAM PIN-783334

**BEFORE**  
**HON'BLE MR. JUSTICE AJIT BORTHAKUR**

|                        |                                                                  |
|------------------------|------------------------------------------------------------------|
| For the petitioners    | : Mr. B. Sinha, Advocate                                         |
| For the respondents    | : Mr. B.B. Gogoi, Addl. P.P., Assam<br>Ms. S.G. Baruah, Advocate |
| Date of hearing        | : 23.05.2022                                                     |
| Date of Judgment/Order | : 28.07.2022                                                     |

## **JUDGMENT & ORDER**

Heard Mr. B. Sinha, learned counsel for the petitioners as well as Mr. B.B. Gogoi, learned Addl. P.P., Assam for the State respondent No. 1. Also heard Ms. S.G. Baruah, learned counsel for the respondent No. 2.

2. This petition under Section 482 Cr.P.C. has been filed for quashing of the criminal proceeding drawn as per order, dated 28.07.2021, on the basis of charge-sheet, dated 31.05.2020, arising out of F.I.R., dated 19.03.2020 being registered as Tamarhat P.S. Case No. 74/2020 corresponding to G.R. Case No. 1310/2020 under Sections 406/420/506 of the IPC.

3. The petitioners' case precisely is that the respondent No. 2/informant had lodged an F.I.R., on 19.03.2020, with the Officer-in-Charge of Tamarhat P.S. alleging that the accused/petitioner No. 1 in order to get the distributorship of Indian Oil LPG at Barundanga had entered into a registered agreement for lease of 1 Bigha of land covered by Dag Nos. 841 and 840 of Khatian No. 369 of village- Barundanga on 31.12.2008 for 30 years @ Rs.12,000/- per annum with provision for enhancement of rate after every 10 years. Accordingly, the informant filled up his pond and felled betel nut and other trees and handed over possession of the aforesaid land to the accused petitioner No.1, but the accused petitioner No. 1, on the ill-advice of accused petitioner No. 2 and another had not paid anything to him. It is alleged that the accused persons constructed an LPG godown over the land of one Maniruddin Prodhan Sarkar. For this purpose, the accused petitioner No. 2 is alleged to have submitted fake documents in the Indian Oil Corporation Limited, Indane Department by forging the signature of the accused petitioner No.1. Thereby, the accused persons had

not only misappropriated Rs.20 lakhs of the informant, but also threatened him with dire consequences with the help of some hired miscreants when he demanded his money. On the basis of the aforesaid F.I.R., police registered a case being Tamarhat P.S. Case No. 74/2020 and after completion of investigation, submitted charge-sheet under Sections 406/420/506 of the IPC.

4. Mr. B. Sinha, learned counsel appearing for the petitioners, submitted that the petitioner No. 1 is the wife of the petitioner No. 2 and they are falsely implicated in the case, which is out and out a civil nature dispute arising out of contractual obligations. Mr. Sinha submitted that the petitioner No. 1 had proposed to take up the business of Distributorship of SK Oil, L.P.G., small industries etc., for which purpose, she required 1 [one] bigha of land and the respondent No. 2 having agreed to provide, entered into an agreement, on 31.12.2008, but did not deliver possession of the land. On the other hand, Mr. Sinha submitted, the petitioner No. 1 did not get the Distributorship till 2019. However, the IOCL authority by a letter, dated 27.07.2018 intimated the petitioner No. 1 about her selection for Distributorship and asked to deposit Rs. 40,000/- and to submit the relevant documents including the land papers. Accordingly, the petitioner no. 1 approached the respondent No. 2 for handing over the possession of the agreed land plot, but he refused. Therefore, the petitioner No. 1 offered an alternative plot of land for the proposed Distributorship, but the IOCL authorities decided to redraw the LPG Distributorship at Barundanga locality. The petitioner No. 1 challenging the aforesaid decision of the IOCL filed W.P.(C) No. 7157/2018 and pursuant to the direction passed by this court therein, the IOCL authorities accepted the land proposed by her, which was taken on lease on 31.12.2008 for a period of 30 years from the respondent No. 2/informant. The petitioner No. 1 on receipt of

the clearance certificate from the Petroleum & Explosives Safety Organisation vide certificate, dated 11.07.2019, approached the respondent No. 2/informant to develop the land for which purpose, he received money, but refused to do so. Mr. Sinha further submitted that in the compelling situation, the petitioner No. 1 submitted a representation on 30.08.2019 to the IOCL authority to permit her to construct the godown/showroom of Gramin Vitarak LPG Distributorship at Barundanga over her own land and accordingly on receipt of permission, she developed necessary infrastructures and has been carrying out the LPG Distributorship. But the respondent No. 2/informant by filing a false and fabricated F.I.R., has put the petitioners, husband and wife, in criminal case despite the dispute is apparently civil in nature.

5. Opposing the petition, Mr. B.B. Gogoi, learned Additional Public Prosecutor for the State respondent No. 1, submitted that as the learned trial court has taken cognizance of the offences as charge-sheeted and issued summons to the accused petitioners for their appearance, instead of quashing the proceeding under Section 482 Cr.P.C., they may be directed to appear in response to the summons and raise their grievances at the time of consideration of charges.

6. Ms. S.G. Boruah, learned counsel appearing for the respondent No. 2/informant concurred with the submission made by the learned Additional Public Prosecutor.

7. I have given due consideration to the above submissions made by the learned counsel for both sides and perused the record of P.R.C. No.1102/2021 along with the case diary.

8. It may be mentioned that under Section 482 Cr.P.C., the High Court can interfere only when it is satisfied that it is necessary (i) to give effect to any

order passed by the court; (ii) to prevent abuse of the process of the court and to secure the ends of justice. Such power is extraordinary in nature and can be exercised even in respect of a matter pending in criminal court such as in the proceeding which is manifestly frivolous, vexatious and oppressive.

9. A perusal of the case record, it is revealed that the entire foundation of the case rests on a registered Deed of Lease of a plot of land for a period of 30 years, dated 31.12.2008, executed between the lessor respondent No. 2/informant and the accused petitioner No. 1 incorporating mutually agreed terms and conditions for the purpose of starting the business of L.P.G. Distributorship or SKO Dealership or for establishment of small industry. The terms and conditions for the lease were as under-

*“1. That, the 1<sup>st</sup> party/Lessor leased out the below schedule land to the 2<sup>nd</sup> party/Lessee for a period of 30(Thirty) years with effect from today.*

*2. That, after expiry of this Lease period, this Deed of Lease shall be extended on fresh terms and conditions mutually.*

*3. That, the yearly rent is fixed @Rs.12,000/- (Rupees Twelve Thousand) only (i.e. Rs.1,000/- per month), which shall be payable by the Lessee to the Lessor with effect from today.*

*4. That, the yearly rent shall be increased @50% after every 10(Ten) years.*

*5. That, the Lessee shall have the right to develop the leased property and also to construct any building/structure over the land as required by him.*

*6. That, all charges of Electricity connection and Machinery equipment, installed by Lessee during the Lease-period on the land shall be paid by the Lessee.*

*7. That, the Lessee shall carry lawful business and shall not run any unlawful business in the said place.*

*8. That, the Lessee shall be entitled to insure his properties and business materials against fire, theft and other risk.*

*9. That, Lessee shall have no right to sub-lease the leased property to a third party without written consent of the Lessor.*



10. *That, the Lessee shall pay the Land Revenue, Tax and any other Fees imposed upon the leased property within the lease period.*

11. *That, no party to this instrument shall have right to cancel this Deed of Lease unilaterally.*

12. *That, the terms and conditions of this Deed of lease shall be binding to both the parties and their legal heirs, successors, representatives etc.*

13. *That, if any party violate any terms and conditions of this Deed of Lease, the other party will be entitled to enforce the terms with compensation, if any."*

10. The grievance of the respondent No. 2/informant as alleged in the F.I.R., dated 19.03.2020, whereupon Tamarhat P.S. Case No. 74/2020 was registered, disclosed that the accused petitioner No. 1 in breach of the terms and conditions aforementioned has not paid the lease premiums despite effecting delivery of possession and instead of starting the business of LPG Distributorship thereon, started development of infrastructure for the aforesaid business on a plot of land belonged to one Moniruddin Pradhani Sarkar. His further grievance is that the accused petitioner No. 2 forging signatures of his wife prepared false documents and submitted to the IOCL. However, it appears that the IOCL has not launched any legal action against the accused petitioners for their alleged commission of forgery of documents. It is noticed that the police after completion of investigation has laid a charge-sheet under Sections 406/420/506 of the IPC against both the accused petitioners and accordingly, the learned Magistrate has issued summons for their appearance in the case, registered as P.R.C. No. 1102/2021.

11. The above factual matrix does show that the dispute between the parties is purely civil in nature and as such, initiation of criminal proceeding will be an abuse of the process of the Court. The remedy of the respondent No. 2 at best lies in civil Court for breach of contract subject to limitation etc.



12. For the above stated reasons, the petition stands **allowed** setting aside and quashing the impugned order, dated 28.07.2021, passed by the learned Sub-Divisional Judicial Magistrate (S), Dhubri in P.R.C. No. 1102/2020 (old G.R. Case No. 1310/2020) arising out of Tamarhat P.S. Case No. 74/2020, as prayed for.

13. Accordingly, the petition stands disposed of.

**JUDGE**

**Comparing Assistant**