



GAHC010074662022

Page No.# 1/12



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

Case No. : Crl.Pet./352/2022

APURBA KR CHOUDHURY AND 13 ORS
SON OF LATE SURYA KR. CHOUDHURY
R/O WARD NO. 3, PATHSALA TOWN, P.S. PATACHARKUCHI, DIST. BAJALI,
ASSAM, PIN-781325

2: SRI DWIJEN PATGIRI
SON OF LATE HARMOHON PATGIRI
R/O VILL-MUGURIA
P.S. PATACHARKUCHI
DIST. BAJALI
ASSAM

3: SRI MAHESWAR TALUKDAR
S/O LATE BRIHASPATI TALUKDAR
R/O VILL- WARD NO. 4

MUGURIA (PRAGATI NAGAR) PATHSALA
P.S. PATACHARKUCHI

DIST. BAJALI
ASSAM

4: SRI AMULYA TALUKDAR
S/O LATE RAJANI TALUKDAR

R/O VILL- WARD NO. 4

MILANPUR
P.S. PATACHARKUCHI
DIST. BAJALI
ASSAM

5: SRI BUDUL TALUKDAR @ BUBUL TALUKDAR
S/O LATE SIBA NATH TALUKDAR



R/O VILL- WARD NO. 3

PATHSALA
P.S. PATACHARKUCHI
DIST. BAJALI
ASSAM

6: SRI NUR ISLAM @ NURUL ISLAM
S/O LATE MANTAJ ALI
R/O VILL- ISLAMPUR PATHSLA

P.S. PATACHARKUCHI
DIST. BAJALI
ASSAM

7: SRI BHABESH KALITA
S/O LATE NARESWAR KALITA
R/O VILL- KURUWA
P.S. PATACHARKUCHI
DIST. BAJALI
ASSAM

8: SRI SURESH CHOUDHURY
S/O SRI MADHURAM CHOUDHURY
R/O VILL- BARBANG
KHANDOPARA
PATHSALA
P.S. PATACHARKUCHI
DIST. BAJALI
ASSAM

9: SRI MANTU CHOUDHURY
S/O SRI PAVAN CHOUDHURY
R/O VILL- BARBANG JANPAR
PATHSALA
P.S. PATACHARKUCHI
DIST. BAJALI
ASSAM

10: SRI NARENDRA NATH GOSWAMI
S/O BONGSHIDHAR GOSWAMI
R/O VILL- WARD NO. 5
SARIYASATRA

PATHSALA
P.S. PATACHARKUCHI
DIST. BAJALI
ASSAM



11: SRI CHAKPAK SARMAH
S/O LATE KANDARPA SARMAH
R/O WARD NO. 4
MURURIA
PATHSALA
P.S. PATACHARKUCHI
DIST. BAJALI
ASSAM

12: SRI MUNIN DAS @ MUNINDRA DAS
S/O LATE LANKESWAR DAS
R/O VILL- JYOTINAGAR
PATHSALA TOWN
P.S. PATACHARKUCHI
DIST. BAJALI
ASSAM

13: SRI KAMESWAR TALUKDAR
S/O LATE PRIYA NATH TALUKDAR
R/O VILL- WARD NO. 4

MILANPUR
PATHSALA

P.S. PATACHARKUCHI
DIST. BAJALI
ASSAM

14: SRI MUKUL SARMAH
S/O LATE AMBIKA PRASAD SARMAH
R/O WARD NO. 3
PATHSALA
P.S. PATACHARKUCHI
DIST. BAJALI
ASSA

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:THE DEPUTY COMMISSIONER

BAJALI
MADAN RAUTA NAGAR

PATHSALA



DIST. BAJALI
ASSAM
PIN-78132

Advocate for the Petitioner : MR J BORAH

Advocate for the Respondent : PP, ASSAM

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Date of hearing : **28.04.2022**

Date of Judgment : **06.05.2022**

JUDGMENT & ORDER

The extraordinary powers conferred to this Court by Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called CrPC), has been sought to be invoked by this petition jointly filed by 14 nos. of petitioners with a prayer for quashing the FIR dated 20.09.2021 registered as Patacharkuchi Police Station Case No. 479/2021 under Sections 120(B) / 420 / 409 / 467 / 468 / 471 of the IPC read with Sections 7 / 7(A) / 12 of the Prevention of Corruption Act, 1988. The principal grounds of challenge are that the FIR does not *prima facie* disclose the ingredients of the offence and no specific complaint has been made against the petitioners. Support has also been drawn from an order dated 24.09.2021 of this Court in Criminal Petition No. 522/2021 that acting as land broker does not *prima facie* constitute any offence.

2. To appreciate the issue, it is necessary to have the facts of the case in brief.
3. The petitioners are businessmen and though there is a statement in paragraph 2 of the petition that the "petitioner no. 15" is a Government Employee, there is no such petitioner no. 15 in the array of the parties. Nonetheless, the present petition has been filed in respect of an FIR dated 20.09.2021 registered as Patacharkuchi Police Station Case No. 479/2021 under Sections 120(B) / 420 / 409 / 467 / 468 / 471 of the IPC read with Sections 7 / 7(A) /



12 of the Prevention of Corruption Act, 1988.

4. It is the case of the petitioners that the Deputy Commissioner, Bajali had issued a communication dated 20.09.2021 to the Superintendent of Police, Bajali alleging *inter alia* that the petitioners are involved in land dealings in the Bajali districts. The aforesaid communication was forwarded to the Patacharkuchi PS leading to the registration of the present case. The petitioners were arrested on 20.09.2021 and the learned Special Judge, Assam vide order dated 22.09.2021 had forwarded some of the petitioners for seven days police custody.

5. The said order dated 22.09.2021 was the subject matter of challenge by some of the petitioners, who have preferred a criminal petitions before this Court including Criminal Petition No. 522/2021. It is the case of the petitioners that while calling for the Case Diary vide order dated 24.09.2021, an observation was made that though the case has been registered under the said provisions of Law, the FIR and the other materials on record do not *prima facie* disclose any ingredients of the offence. This Court had further observed that land broking, as such cannot constitute an offence under the IPC or PC Act unless the same is associated with some activities of criminal nature. In the meantime, the petitioners had also filed bail applications in this Court and accordingly the criminal petition was closed vide order dated 27.09.2021.

6. It is the case of the petitioners that the bail applications were allowed by this Court vide order dated 29.09.2021. Thereafter, the present petition has been filed for quashing the FIR on certain grounds pleaded in the petition.

7. I have heard Shri J. Borah, learned counsel for the petitioners. Also heard Ms. SH Bora, learned Additional Public Prosecutor, Assam.

8. Shri Borah, the learned counsel for the petitioners has submitted that a plain reading of the FIR does not constitute any offence under the various sections of law under which it is registered. He submits that there is no specific description as to how each of the petitioners are connected with the offence and simply an annexure has been appended to the communication dated 20.09.2021 by the Deputy Commissioner, Bajali wherein the names of the petitioners and few others have been given.

9. The learned counsel has drawn the attention of this Court to the order dated 24.09.2021 passed by this Court in Criminal Petition No. 522/2021 which was primarily filed against the order dated 22.09.2021 whereby the petitioners were remanded to seven days police custody. This Court after hearing the parties had directed listing of this petition again on 27.09.2021. The learned counsel submits that in the said order, an observation has been made that the FIR and the other materials available on record *prima facie* do not disclose any ingredients of offences committed under those provisions of the IPC. It was also observed that it was not clear as to the nature of the allegations brought against the petitioners.

10. The learned counsel for the petitioners has submitted that in the meantime, the bail applications were moved for the petitioners which were allowed by this Court vide orders dated 29.09.2021. In paragraph 6 of the petition it has however been stated that the criminal petition no. 522/2021 was closed vide order dated 27.09.2021. For ready reference, the relevant part of paragraph 6 is extracted hereinbelow-

"In the meantime, the petitioners have also preferred bail applications before the Hon'ble High Court seeking bail in connection with the instant case and in view of the aforesaid Criminal Petition along with the others have been closed vide order dated 27.09.2021."

11. Attention of this Court has also been drawn to various orders passed on 29.09.2021 by this Court in the various Bail Applications wherein description of the documents seized from different petitioners was narrated. It has also been observed that there is no instance to indicate that the seized documents were not legal.

12. The learned counsel for the petitioners accordingly submits that in view of the aforesaid facts and circumstances, the FIR itself is liable to be quashed. In support of his submission, the learned counsel relies upon the landmark decision of the Hon'ble Supreme Court in the case of ***State of Haryana and Others Vs. Bhajan Lal and Others*** reported in ***1992 Supp. (1) SCC 335***. Attention of this Court has been drawn to the guidelines laid down in the said case in paragraph 102, which is extracted hereinbelow-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this

Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (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) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (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) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) Where there is an express legal bar engrafted in any of the*

provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

13. On the other hand, Ms. SH Bora, the learned Additional Public Prosecutor, Assam submits that the considerations for grant of bail cannot be equated with those which are required at the time of examining a petition under Section 482 of the CrPC. It is the *prima facie* satisfaction of the Court which is required for grant of bail on the basis of the materials available while for quashing of a criminal proceeding, that too at the stage of FIR, the Court will be not in a position to come to a definite conclusion that no allegations, whatsoever, are made out.

14. The rival submissions made by the learned counsel for the parties have been duly considered and the materials before this Court have been carefully examined.

15. Let us deal with the contentions made on behalf of the petitioners in seriatim. It is contended on behalf of the petitioners that the FIR does not disclose commission of any offence. In this regard, the contents of the communication dated 20.09.2021 which has treated to be the FIR is required to be examined. The object of the FIR is to investigate the dealings with the 17 nos. of accused, who are land brokers as there were allegations of irregularities and corrupt practices. As has been settled by a number of judicial precedents that an FIR need not be an encyclopedia or elaborate description of all the facts and only the relevant facts needs to be put so as to put the criminal law into motion. The allegations against the petitioners have to be substantiated by the prosecution only if in the investigation, the charges against the petitioners are found to be established. The investigation which is to be concluded by filing of the Final Form may either be a Final Report

(FR) or a Charge Sheet (CS). In case of Final Report the matter almost comes to an end unless the learned Magistrate takes a view that the materials available do not justify the submission of the Final Report, in which case, the accused has to be given notice whereafter further investigation may be directed. In the alternative case of filing of a Charge Sheet, the accused will have the scope of opportunity to argue for discharge at the time of framing of the charges by the learned Trial Court. When all such remedies in law are available, to invoke the extraordinary powers of this Court under Section 482 of the CrPC, an exceptional case has to be made out. In the instant case, the burden on the part of the petitioners is even higher as the Charge Sheet is yet to be filed and charges are to be framed. In fact, the instant petition can also be dismissed on the ground that it is premature. However, this Court has gone into the merits also.

16. The Hon'ble Supreme Court in a recent judgment of **Musstt Rehana Begum Vs. State Of Assam & Anr. in Criminal Appeal No 118 of 2022 decided on 21-01-2022** has reiterated the law laid down in the case of **(2021) SCC Online SC 315 (M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Ors)** wherein paragraph 23(xii) the following has been stated.

"23(xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/ FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;"

17. In the case of **Bhajan Lal (Supra)** relied upon by the petitioners, while paragraph 102 has been pressed into service, some very important observations have been made in paragraphs 103 and 104 which is extracted hereinbelow-

“103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

104. It may be true, as repeatedly pointed out by Mr Parasaran, that in a given situation, false and vexatious charges of corruption and venality may be maliciously attributed against any person holding a high office and enjoying a respectable status thereby sullyng his character, injuring his reputation and exposing him to social ridicule with a view to spite him on account of some personal rancour, predilections and past prejudices of the complainant. In such a piquant situation, the question is what would be the remedy that would redress the grievance of the verily affected party? The answer would be that the person who dishonestly makes such false allegations is liable to be proceeded against under the relevant provisions of the Penal Code, 1860 — namely under Section 182 or 211 or 500 besides becoming liable to be sued for damages.”

18. The Hon’ble Supreme Court in paragraph 140 had also set aside the judgment of the High Court quashing the FIR as not being legally and factually sustainable in law and only the investigation was interfered with on certain technical grounds including the award of cost.

19. The overall reading of the aforesaid case of **Bhajan Lal (Supra)**, would lead to the conclusion that the power to quash is to be exercised very sparingly and in rarest of the rare cases. The remedies available in law for false and vexatious charges have also been highlighted in the said judgment to dissuade the High Courts from exercising powers under Section 482 CrPC.

20. As regards the observation of this Court in the earlier criminal petition filed against the remand order that the materials did not prima facie disclose any ingredients of the offences,

this Court is of the opinion that the said observation was made on a *prima facie* consideration on the prayer made in the said petition and only by which the matter was directed to be listed for motion again. Further, as disclosed by the petitioners themselves in paragraph 6 of the petition that the said criminal petition no. 522/2021 was closed vide order dated 27.09.2021, the aforesaid observation has otherwise also become otiose. Similarly, the observations made in the bail petitions are to be read along with the observations made that the same was not to be treated as a precedent. In any case, the observations made in the bail applications were admittedly on *prima facie* satisfaction. Further, the same was made within nine days from the date of arrest of the petitioners and lodging of the FIR i.e. 20.09.2021 when the investigation had just commenced and materials were yet to be fully gathered upon investigation. In the opinion of this Court, it would not be prudent at all to be guided by the observations made on the basis of the materials which were within nine days from the date of lodging of the FIR and as on today the investigation has proceeded a lot. As observed by the Hon'ble Supreme Court in the case of **Bhajan Lal (Supra)** in paragraph 103, this Court interfering at this stage would amount to usurping the power and jurisdiction of the learned Trial Court. The relevant observations made are extracted hereinbelow-

“... That the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

21. This Court is also of the view that for consideration of an application for bail vis-à-vis an application under Section 482, different yardsticks are required. The Hon'ble Supreme Court in the aforesaid case of **M/s Neeharika Infrastructure Pvt. Ltd. (Supra)** has held as follows-

“23(iv). The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).”

22. The aforesaid observations have also been reiterated in a recent case of **Musst Rehana Begum (Supra)**.



23. In the backdrop of the aforesaid facts and circumstances and following the law laid by the Hon'ble Supreme Court, this Court is of the considered opinion that the present is not a fit case for exercising the jurisdiction conferred under Section 482 of the CrPC. This Court is of the view that no exceptional case has been made out for exercising the extraordinary powers. Accordingly, the same stands dismissed.

JUDGE

Comparing Assistant