

GANGADHAR KALITA

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v.

THE STATE OF ASSAM AND OTHERS

(Criminal Appeal No.592 of 2015)

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APRIL 13, 2015

[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

Code of Criminal Procedure, 1973 – s. 482 – Power under, exercise of – Criminal complaint against appellant alleging that he fraudulently executed power of attorney by forging signatures of three persons – Civil suit also instituted by the parties – Petition seeking quashing of criminal proceedings on the ground that the dispute between the parties is civil in nature, rejected by the High Court – On appeal, held: In view of the facts and circumstances of the case, the seriousness of the allegations made against the accused that one of the persons said to have executed the power of attorney was minor, and another was away from India, even if the civil suit was instituted by the complainant, the High Court was justified in declining to interfere with the criminal proceedings initiated against the appellant.

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Dismissing the appeal, the Court

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HELD: Having considered the law laid down by this Court that if the allegations in the FIR are not frivolous, malafilde or vexatious, it cannot be simply quashed for the reason that civil suit is also pending in the matter; and that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the

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- A **complaint or the FIR, even if taken at their face value and accepted in entirety, do not prima facie disclose the commission of an offence; and further considering the facts and circumstances of the case and seriousness of the allegations made against the accused, particularly**
- B **that one of the persons said to have executed the power of attorney was minor, and another was away from India, even if the civil suit was instituted by the complainant, the High Court committed no error of law in declining to interfere with the criminal proceedings initiated against the appellant. [Para 9, 10, 11] [377-D; 379-H; 380-A-D]**

- C *Arun Bhandari v. State of Uttar Pradesh and others* 2013 (3) SCR 961: (2013) 2 SCC 801; *Kamaladevi Agarwal v. State of W.B. and others* 2001 (4) Suppl. SCR 284: (2002) 1 SCC 555 – referred to.

Case Law Reference

- 2013 (3) SCR 961 referred to. Para 9
- E 2001 (4) Suppl. SCR 284 referred to. Para 10

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 592 of 2015.

- F From the Judgment and Order dated 20.03.2014 of the Gauhati High Court in Criminal Petition No. 287 of 2009.

M. L. Lahoty, Paban K. Sharma, Gargi B. Bharali, Himanshu Shekhar for the Appellant.

- G Navnit Kumar, Corporate Law Group, Abir Phukan, V. Shyamohan, Shreyas Mehrotra, Apoorv Damodaran for the Respondents.

- H The Judgment of the Court was delivered by

PRAFULLA C. PANT, J. 1. This appeal is directed against judgment and order dated 20.3.2014, passed by the Gauhati High Court in Criminal Petition No. 287 of 2009, whereby said Court has dismissed the petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Code") and declined to quash the criminal proceedings initiated against the appellant.

2. We have heard learned counsel for the parties and perused the papers on record.

3. Brief facts of the case are that a First Information Report dated 25.1.2009 was got lodged by respondent No. 3 Rabindra Nath Kalita at Police Station, Panbazar, District Kamrup, Assam. It is alleged in said report that Kaustav K. Kalita is minor son of respondent No. 3. He (Kaustav K. Kalita), respondent No. 4 Rishi Raj Borgohain, and respondent No. 5 Yuva Raj Borgohain are pattadars-in-possession of the land measuring 11 Bigha 2 Kathas 12 Lachas of Patta No. 56, situated in Village Kamarkuchi under Panbari Mouza of the District. It is further alleged that the complainant (respondent No. 3) came to know that appellant Ganga Dhar Kalita and one Birendra Kumar Das have sold the above mentioned land in favour of Sewali Oza, Kabindra Oza and Kaifie Oza. On enquiry, according to the complainant, it was discovered that Ganga Dhar Kalita (appellant) has fraudulently got executed a power of attorney Deed No. 2062 dated 11.4.2006 by forging signatures of Kaustav K. Kalita, Rishi Raj Borgohain and Yuva Raj Borgohain. Rishi Raj Borgohain (respondent No. 4) is also signatory in the First Information Report given by respondent No. 3 to the police. On the above complaint, police appears to have registered the case as crime No. 25 of 2009 in respect of offences punishable under Sections 419, 468, 420, 471/34 of Indian Penal Code.

4. The present appellant challenged the First Information.

- A Report by filing a petition under Section 482 of the Code on the ground that the dispute between the parties is of civil in nature. It is also pleaded by the appellant that a title suit No. 477 of 2008 has already instituted by Birendra Kumar Das. It is also urged that another suit No. 293 of 2009 was filed before the Court of Civil Judge No. 3, Guwahati, by the informants (respondent Nos. 3 and 4) seeking cancellation of the power of attorney in question.

5. However, after hearing the parties, the High Court was not impressed with the arguments advanced on behalf of the accused (appellant), and observed that since the allegations made against him make out a cognizable offence, and the allegations are serious in nature, as such, it declined to interfere with the criminal proceedings. The High Court further opined that the complainant has not acted mala fide.

6. Learned counsel for the appellant argued before us that since there are two suits already instituted, one filed by Birendra Kumar Das and another filed by the complainants, as such, the criminal proceedings in the matter are nothing but abuse of process of law.

7. In response to the above, learned counsel for the respondents/complainants drew our attention to the copy of order dated 15.11.2011 passed in Title Suit No. 477 of 2008, i.e., one instituted by Birendra Kumar Das. Copy of said order, which is annexure A-1 to the counter affidavit filed on behalf of respondent Nos. 3 and 4, shows that Title Suit No. 477 of 2008 was dismissed for non-prosecution. There is nothing on the record to suggest that after dismissal of the suit on 15.11.2011 said suit was restored. In view of said fact, it can be said that the appellant has attempted to suppress the fact that Title Suit No. 477 of 2008 has been dismissed. As to the pendency of the suit No. 293 of 2009 filed by respondent Nos. 3 and 4 and Kaustav K. Kalita, it is true that they have sought cancellation

of general power of attorney Deed No. 2062 of 2006 dated 11.4.2006 purporting to have been executed in respect of the property in question. A

8. The allegations made in the First Information Report disclose that there are serious allegations against the appellant (accused) that he fraudulently got executed the power of attorney, and Kaustav K. Kalita was minor (aged nine years) on the date when the deed was said to have been signed by him. It is also alleged that respondent No. 5 Yuva Raj Borgohain, who is said to be another person who executed the power of attorney, was away from India on the date of alleged execution of the Deed. B C

9. In *Arun Bhandari v. State of Uttar Pradesh and others*¹, this Court has held that if the allegations in the First Information Report are not frivolous, mala fide or vexatious, it cannot be simply quashed for the reason that civil suit is also pending in the matter. Paragraphs 2, 3 and 33 of said case are reproduced below: - D

“2. The factual score as depicted is that the appellant is a non-resident Indian (NRI) living in Germany and while looking for a property in Greater Noida, he came in contact with Respondent 2 and her husband, Raghuvendra Singh, who claimed to be the owner of the property in question and offered to sell the same. On 24-3-2008, as alleged, both the husband and wife agreed to sell the residential plot bearing No. 131, Block Cassia Fistula Estate, Sector Chi-4, Greater Noida, U.P. for a consideration of Rs 2,43,97,880 and an agreement to that effect was executed by Respondent 3, both the husband and wife jointly received a sum of Rs E F G

A 1,05,00,000 from the appellant towards part-payment of
the sale consideration. It was further agreed that
Respondents 2 and 3 would obtain permission from the
Greater Noida Authority to transfer the property in his
favour and execute the deed of transfer within 45 days
B from the grant of such permission.

3. As the factual antecedents would further reveal, the
said agreement was executed on the basis of a
registered agreement executed in favour of Respondent
C 3 by the original allottee, Smt Vandana Bhardwaj to sell
the said plot. After expiry of a month or so, the appellant
enquired from Respondent 3 about the progress of
delivery of possession from the original allottee, but he
received conflicting and contradictory replies which
D created doubt in his mind and impelled him to rush to
Noida and find out the real facts from the Greater Noida
Authority. On due enquiry, he came to know that there
was a registered agreement in favour of the third
respondent by Smt Vandana Bhardwaj; that a power of
E attorney had been executed by the original allottee in
favour of Respondent 2, the wife of Respondent 3; that
the original allottee, to avoid any kind of litigation, had
also executed a will in favour of Respondent 3; and that
Respondent 2 by virtue of the power of attorney, executed
F in her favour by the original allottee, had transferred the
said property in favour of one Monika Goel who had got
her name mutated in the record of the Greater Noida
Authority. Coming to know about the aforesaid factual
G score, he demanded refund of the money from the
respondents, but a total indifferent attitude was exhibited,
which compelled him to lodge an FIR at Police Station
Kasna, which gave rise to Criminal Case No. 563 of
2009.

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33. Applying the aforesaid parameters we have no hesitation in coming to hold that neither the FIR nor the protest petition was mala fide, frivolous or vexatious. It is also not a case where there is no substance in the complaint. The manner in which the investigation was conducted by the officer who eventually filed the final report and the transfer of the investigation earlier to another officer who had almost completed the investigation and the entire case diary which has been adverted to in detail in the protest petition prima facie makes out a case against the husband and the wife regarding collusion and the intention to cheat from the very beginning, inducing the appellant to hand over a huge sum of money to both of them. Their conduct of not stating so many aspects, namely, the power of attorney executed by the original owner, the will and also the sale effected by the wife in the name of Monika Singh on 28-7-2008 cannot be brushed aside at this stage.”

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10. No doubt, where the criminal complaints are filed in respect of property disputes of civil in nature only to harass the accused, and to pressurize him in the civil litigation pending, and there is prima facie abuse of process of law, it is well within the jurisdiction of the High Court to exercise its powers under Section 482 of the Code to quash the criminal proceedings. However, the powers under the section are required to be exercised sparingly. In *Kamaladevi Agarwal v. State of W.B. and others*², this Court has observed as under:

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“This Court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial

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- A stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at their face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction.”
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11. Having considered the law laid down by this Court, as above, and further considering the facts and circumstances of the case and seriousness of the allegations made against the accused, particularly that one of the persons said to have executed the power of attorney was minor, and another was away from India, in our opinion, even if the civil suit was instituted by the complainant, the High Court committed no error of law in declining to interfere with the criminal proceedings initiated against the appellant in the present case.
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12. Therefore, we are not inclined to interfere with the order passed by the High Court dismissing the petition under Section 482 of the Code. Accordingly the appeal is dismissed.
- E However, we clarify that the observations made in our order would not be read to influence the civil or criminal proceedings pending between the parties.

Nidhi Jain

Appeal dismissed.