



2025:GAU-AS:2446

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

CRIMINAL PETITION No.1089 OF 2018

Sri Brajendra Das, (50 years),
Son of Late Niranjana Das,
Presently residing at H/No.10, Bye
Lane No.12, Lachit Nagar Main Road,
Guwahati-08 under Bhangagarh Police
Station in the District of Kamrup(M),
Assam.

..... Petitioner

-Versus-

- 1.** The State of Assam,
Represented by P.P. Assam.
- 2.** Sri Bhaskar Sarma,
Son of Sri Prabhat Ch. Sarma,
Resident of Sivasagar, Lakhiminagar
Ward No.2,
P.O. Cherekapar,
P.S. Sivasagar,
District: Sivasagar, Assam,
PIN: 785640.

.....Respondents

- B E F O R E -
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Petitioner(s) : Ms. B. Goswami.

For the Respondent(s) : Mr. P.S. Lahkar for respondent No.1.

Date of Hearing : **07.03.2025**

Date of Judgment : **07.03.2025**

JUDGMENT & ORDER (ORAL)

Heard Ms. B. Goswami, learned counsel appearing for the petitioner. Also heard Mr. P.S. Lahkar, learned Additional Public Prosecutor appearing for the State respondent.

2. None appears for the respondent no.2. Pertinent that the name of the learned counsel appearing for the respondent no.2 is reflected in the cause-list.

3. Accordingly, the matter is taken up for final disposal.

4. By filing this petition under Section 482 of the Cr.P.C read with Section 401/397 of the Cr.P.C, 1973, the petitioner is seeking quashing of the impugned order dated 14.08.2018 passed by the learned Sub-Divisional Judicial Magistrate (S) No.1, Kamrup(M) at Guwahati, whereby the learned Magistrate Court had taken cognizance of the offences under Section 420/406 of IPC against the accused/petitioner as well as quashing of the whole proceeding and C.R. Case

No.2343^c/2016 pending before the learned Sub-Divisional Judicial Magistrate (S) No.1, Kamrup(M) at Guwahati.

5. The facts of the case is that the complainant/respondent no.2 filed a complaint petition before the Chief Judicial Magistrate, Kamrup(M) at Guwahati on 30.07.2016 stating inter-alia that the complainant/respondent no.2 was searching for a plot of land for constructing a permanent resident and accordingly he came to the accused/petitioner, who agreed to sale his plot of land and asked the complainant/respondent no.2 to make an advance payment of Rs.2,00,000/-. Accordingly the complainant/respondent no.2 on 12.03.2016 in the presence of two witnesses paid Rs.2,00,000/- to the accused/petitioner. However, later on despite the complainant/respondent no.2 contacting the accused/petitioner for compliance of the sale, the same was not done, for which a legal notice was issued. Accordingly, it is alleged that the accused/petitioner has cheated the complainant/respondent no.2. The said case was registered as C.R. Case No.2343^c/2016.

6. The learned Chief Judicial Magistrate, Kamrup(M) upon received of the aforesaid complaint petition registered the matter as C.R. Case No. 2343^c/2016 and thereafter transferred the case records to the Court of learned Sub-Divisional Judicial

Magistrate (S) No.1, Kamrup(M) at Guwahati for disposal.

7. Thereafter, learned Sub-Divisional Judicial Magistrate (S) No.1, Kamrup(M) at Guwahati upon receipt of the case records recorded the statement of the complainant under Section 200 of the Cr.P.C and thereafter, by order dated 14.08.2018, took cognizance under Section 420/406 of IPC against the accused/petitioner and was further pleased to fix the next date on 03.10.2018 for appearance of the accused/petitioner.

8. Situated thus, the present petition has been filed seeking quashing of the complaint as well as the order dated 14.08.2018, whereby cognizance has been taken by the learned Magistrate Court.

9. Ms. B. Goswami, learned counsel appearing for the petitioner submits that even if the allegation in the complaint is taken in its face value and accepted to be true, no criminal offence whatsoever is made out and therefore, continuance of the criminal proceeding is wholly unjustified.

10. Ms. B. Goswami, learned counsel appearing for the petitioner further submits that the order of the learned Magistrate taking cognizance is absolutely without any application of mind and therefore is totally perverse and erroneous and hence the same is liable to be set aside and quashed by this Court.

11. Mr. P.S. Lahkar, learned Additional Public Prosecutor appearing for the State respondents in his usual fairness submits that it is apparent from the body of the complaint that upon the complainant/respondent no.2 approaching the accused/petitioner for completing the sale proceedings, the accused/petitioner was willing to return the money and as such no case of cheating or breach of trust as claimed is made out on the face of the complaint.

12. He accordingly submits that the complaint is vague and assuming the allegation in the complaint is correct, the same cannot give rise to a criminal proceeding as the dispute essentially is of civil in nature.

13. I have heard the learned counsel appearing for both the contending parties and perused the material available on record.

14. Apt to refer to the complaint, which is reproduced hereunder for ready reference:-

“ The complainant begs to state as follows:

1. That the complainant is a citizen of India and a resident of the Lakhiminagar, Ward No. 2, Sivasagar, P.O. Cherekapar, P.S. Sivasagar, District-Sibasagar, Assam, Pin-785640 Ward No. 2 and at present residing at Kamakhya Gate, House No. 6, P.O. & P.S-

Bharalumukh, Guwahati-9, District-Kamrup (M), Assam, for carrying out his business at Greater Guwahati which he is continuing since 2007.

2. That during this period till date the complainant is residing at Guwahati and he sought to establish himself permanently for which he was searching a plot of land for constructing his residential house when he came close to Dr. Brajendra Das Child Specialist doctor practicing in Guwahati and residing at Bordoichila Bhawan, Bhangagarh, Guwahati-5, AS-4 and at present residing at House No. 10, Bye Lane No.12, Lachit Nagar Main Road, Guwahati-781008, in the district of Kamrup (M), Assam who in course of correspondence agreed to sale a plot of land to the complainant and asked the complainant for a advance payment of an amount of money and accordingly sought Rs. 2,00,000/- (Rupees Two Lakhs) only as an advanced amount.

3. That the complainant with good faith and considering the status of the accused Dr. Das on 12-03-2008 in presence of (1) Sri Dhaneswar Medhi and (2) Sri Ranjit Deka paid Rs. 2,00,000/- (Rupees Two Lakhs) only in cash with consent of the accused to immediately finalize the land sale work.

4. That it was revealed that the accused Dr. Das was well known to Mr. Dhaneswar Medhi and Mr. Ranjit Deka and they consented to be witnesses in the money

transaction and they signed in the receipt of money through which Dr. Das issued receipt of Rs. 2,00,000/- (Rupees Two Lakhs) only to the complainant as the same date and on the spot in money transaction in the then residence of Dr. Brajendra Das in Bordoichila Bhawan, Bhangagarh, Guwahati-5, AS-4, and hence Mr. Dhaneswar Medhi and Mr. Ranjit Deka put their hands as witnesses for which Mr. Dhaneswar Medhi and Mr. Ranjit Deka has been introduced as witnesses in this complaint petition who will give their statements if and when called for by the Hon'ble Court.

5. That the accused Dr. Das was contacted for compliance of the sale of landed property which he committed since before the transaction of money in advance on 12-03-08 but he paid no heed actively for complying the transfer of land committed earlier to the complainant and finding no other means the complainant under compulsion issued pleader's notice for finalizing the matter which became long pending vide Legal Notice dtd. 09-10-15 which the accused Dr. Das receiving on 16-10-15.

6. That after issuing the legal notice the complainant tried to compromise the matter once again for which he met the accused with request to expedite in finalizing the problem as the complainant is suffering from crisis in all respects in the matter when the

accused expressed to pay a lump-sum amount, but without in action and hence being cheated by the activities of the accused the complainant is filing this complaint petition before your Hon'ble Court for issuing process and summoning the accused for taking appropriate action against the accused person who has committed cheating to the complainant and being harassed the complainant for not complying the agreement providing the landed property nor returning the advanced money within time limit with reasonable interest to the complainant till date.

6. That the limitation is not barred in this matter as the continuous correspondence was going on between the parties in both verbally and in writing.

7. That it is a fit case where the Hon'ble court may issue process under the provisions of Cr. P.C. for disposing the matter at the earliest possible.

8. That this complaint is made bonafide and for the ends of justice.

It is therefore prayed that your Hon'ble court may be pleased to admit this petition and after perusal be pleased to issue process issuing summons to the accused person for taking the accused and for which into custody and for punishing him under the provisions of the admissible sections in IPC and for

act of your kindness the petitioner /complainant as in duty bound shall ever pray.”

15. Based on the aforesaid complaint, the learned Magistrate Court by order dated 14.08.2018 took cognizance under Section 420/406 of IPC against the accused/petitioner.

16. Order dated 14.08.2018 is reproduced hereunder for ready reference:-

“ ORDER-SHEET

C.R. Case No. 2343/2016

14-08-2018

Complainant Bhaskar Sarma is present.

Today, the case was fixed for further-inquiry.

Perused the C/R including the complaint petition, statement of the complainant recorded under section 200 CrPC as well as statement of witness Sri Mrinal Das u/s. 202 CrPC has already been recorded. Heard learned counsel for the complainant.

On such perusal and hearing I find prima-facie materials of offence under section 420/406 of IPC against the accused person Sri Brajendra Das. Accordingly, cognizance is taken against the accused person Sri Brajendra Das under section 420/406 of IPC.

Issue summons to accused person Sri Brajendra Das.

Complainant to take steps.

Fix 03-10-2018 for appearance.”

17. It appears that the complainant/respondent no.2 has approached the accused/petitioner for sale of the petitioner's plot of land which the petitioner agreed and accordingly the complainant/respondent no.2 paid a sum of Rs.2.00.000/- before two witnesses and the money receipt of the aforesaid transaction is also enclosed to the complaint petition.

18. It further appears that the accused/petitioner thereafter did not complete the sale and as such a legal notice was issued.

19. It further appears that after issuing the legal notice, the respondent no.2 attempted to compromise the matter by meeting the petitioner wherein he requested him to settle the matter. It further appears that the petitioner at that time expressed to pay lump-sum amount.

20. It is well settled that every breach of trust may not result in criminal breach of trust unless there is evidence showing act of fraudulent misappropriation. The act of breach of trust involves a civil wrong, in which a person who is aggrieved, may seek redressal for damages in civil Court but a breach of trust with mens rea gives rise to criminal prosecution. Similarly, mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. To hold the person guilt

of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making promise.

21. In the present case, on perusal of the aforesaid averments and taking the same to be correct in its face value, there appears no misappropriation or fraudulent or dishonest intention at the beginning of the transaction and as such no case under Section 420/406 can be said to be made out from reading of the complaint. Mere breach of a promise cannot give rise to criminal prosecution.

22. That being so, the order of the learned Magistrate Court taking cognizance under Section 420/406 of IPC against the accused/petitioner by order dated 14.08.2018 is palpably and manifestly erroneous.

23. Accordingly, the order dated 14.08.2018 passed by the learned Sub-Divisional Judicial Magistrate (S) No.1, Kamrup(M) at Guwahati taking cognizance as well as the whole proceeding in C.R. Case No.2343^c/2016 is hereby set aside and quashed.

24. Resultantly, the Criminal Petition stands allowed

JUDGE

Comparing Assistant