

GAHC010081182021



2025:GAU-AS:13442

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

Crl. Pet No. 334 of 2021

Dr. Neena Sharma,Petitioner
Aged about 63 years,
Wife of Direction. Indrajit Sharma,
Resident of 68, Boaroo Road,
PS Paltanbazar, Guwahati – 781007,
District – Kamrup (M), Assam.

-Versus-

1. State of AssamRespondents
Represented by PP, Assam.

2. Smt. Jupitora Baruah,
Wife of Sri Rajib Baruah,
Resident of Prakritik Nibaas,
Block-1, 4C, Kanwachal Road,
Silpukhuri, Guwahati-781003,
P.S. Chandmari,
District-Kamrup (M), Assam.

For the Petitioner : Mr. A.C. Borbora, Advocate.

For the Respondents : Mr. K. Baishya, Additional. PP.

Date of hearing : **03.09.2025.**

Date of judgment : **26.09.2025.**

-BEFORE-

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

JUDGMENT & ORDER (CAV)

Heard Mr. A.C. Borbora, learned Senior Counsel for the petitioner. Also heard Mr. K. Baishya, learned Additional Public Prosecutor, Assam and Mr. D. Goswami, learned counsel for the respondent No. 2.

2. The present application under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) read with Article 226 of the Constitution of India has been preferred seeking quashment of Complaint Case No. 1970/2019 dated 16.05.2019 and Order dated 01.11.2019, passed by the Court of learned Judicial Magistrate First Class (JMFC), Kamrup(M), taking cognizance of the offence under Section 406 of the Indian Penal Code (IPC) against the present petitioner.

3. The prosecution case is that the accused person is the owner and possessor of a plot of land covered by Dag No. 189 of K.P Patta No. 50 of Village Patarkuchi (Kamarkuchi) under Panbari Mouza in the district of Kamrup (Metropolitan), Assam, which she had proposed to sell to the complainant and on 25.02.2015, the accused person entered into an agreement for sale with the complainant thereby agreeing upon to sell the said plot of land to the complainant and upon signing of the said agreement, the complainant had paid Rs. 5,50,000/- (Rupees five lakhs fifty thousand only), which was the total consideration for the said sale, in cash to the accused

person and the accused person duly acknowledged the receipt of the same. The husband of the complainant, Shri Rajib Baruah and the husband of the accused person, Dr. Indrajit Sharma were attesting witnesses to the said agreement.

4. It is alleged that after having handed over the said amount of money, the accused had assured the complainant that she would obtain the necessary sale permission/no objection from the competent authorities and would register the sale deed in favour of the complainant.

5. It is further alleged that when much time had passed by and still the accused person had not updated the complainant regarding any information about the progress in obtaining the sale permission, the complainant met the accused person at her residence at Dr. B. Barocah Road, Guwahati and asked her regarding the progress in the work of the sale permission and then the accused person told the complainant that since the land value has enhanced to a great extent she would have to pay Rs. 3,00,000/- (Rupees three lakhs) only additionally to the accused person for the said plot of land besides the agreed consideration of Rs. 5,50,000/-. After lengthy negotiations, the additional amount was fixed at Rs. 2,00,000/- (Rupees two lakhs) only.

6. It is also stated in the complaint that in the month of October, 2017, she paid the additional amount of Rs. 2,00,000/- (Rupees two lakhs) only in cash to the accused person, but the accused person did not demonstrate the minimum courtesy to issue her a money receipt against the same. Having bestowed faith and trust on the

accused person and keeping in view the long days of acquaintance which the accused person has shared with the complainant, she also did not bother her much for a money receipt. In total, till date, the complainant has paid Rs. 7,50,000/- (Rupees seven lakhs fifty thousand) only to the accused person for the said plot of land, which the accused person had agreed to sell to the complainant.

7. It is further alleged submitted that since more than one year had already passed since the day when the complainant had paid the additional amount of Rs. 2,00,000/- to the accused person and there had been neither any information from her end regarding progress in the work of obtaining sale permission nor did she answer the calls made by the complainant and her husband, on 10.03.2019, the maternal uncle of the complainant, Shri Anuj Barua, who is also well known to the accused person went to her residence to ask the accused person regarding the status of the work of the sale permission in respect of the land which she had agreed to sell to the complainant, but the accused person did not display the minimum courtesy to come out and talk to him. The complainant's said uncle again called the accused over phone on 14.03.2019. On the said day, the accused person picked up the phone and asked him to convey to the complainant to call up on her phone and settle the matter.

8. Since nothing positive was yielding from making phone calls and personal visits, the complainant sent a legal notice to the accused person through her advocate on 09.04.2019 by way of registered post with A/D demanding handing over of the sale permission or alternatively return the amount of Rs. 7,50,000/- (Rupees seven lakhs

fifty thousand) only, which the complainant had paid to the accused person for the said plot of land. The said notice was delivered to the accused person on 13.04.2019, but in spite of almost one month having been passed since the date of receipt of the legal notice, the accused did neither hand over the sale permission to the complainant nor did she return the said money to the complainant. The accused person has not bothered even to reply to the said legal notice. Having no other option, the complainant lodged the present complaint.

9. The learned JMFC, Kamrup (Metro) after recording the deposition of the complainant, took cognizance of the offence under Section 406 IPC and issued summons to the present petitioner.

10. Mr. A.C. Borbora, learned senior counsel appearing for the petitioner submitted that the instant complaint has been initiated on baseless, unfounded and concocted allegations. It is submitted that the petitioner is the absolute owner of a plot of land measuring 1 (One) Bigha, covered by Dag No. 189 of K.P. Patta No. 50 of village Patarkuchi under Mouza Panbari, in the District of Kamrup (Metro), Assam. It is a fact that the petitioner/accused executed an Agreement of sale of land on 25.02.2015 for sale of the aforesaid plot of land to the complainant/Respondent No.2 in consideration of an amount of Rs. 5,50,000/-. Accordingly on the same date of Agreement, the accused/petitioner received the full amount of Rs. 5,50,000/- through cheque from the complainant/respondent No. 2.

11. It is further submitted that the complaint itself and the facts given therein do not

constitute any offence under any of the provisions of the IPC and the filing of the complaint is clearly an abuse of the process of the law with the sole intention to harass and humiliate the accused/petitioner.

12. The learned counsel further submitted that the total amount (sale value) has clearly been stated in the Agreement as Rs. 5,50,000/- and the said entire amount being paid by the Complainant/Respondent No. 2 admittedly at the time of execution of the Agreement of sale on 25.02.2015, there arose no occasion/necessity for the Complainant/Respondent No. 2 to pay an additional amount of Rs. 2,00,000/- as stated in her complaint for which no receipt was obtained. The falsity of payment of this additional of Rs.2,00,000/- is therefore apparent and the Complainant/Respondent No.2 has made such false allegation only to make out a purported offence under the quoted Section of the IPC therein.

13. The learned counsel further submitted that as a matter of fact, after executing the aforesaid Agreement for Sale, the accused/petitioner fell seriously ill as she was diagnosed with cancer. Ever since the later part of 2015 she has been undergoing treatment for her aforesaid medical condition which also included undergoing major surgery and frequent travel outside the State for appropriate/sophisticated medical check-ups.

14. As such, the accused/petitioner did not communicate with the complainant/respondent No. 2 regarding sale permission etc. of the plot of land in question. Moreover, the complainant too neither communicated through any phone

calls nor physically contacted the accused/petitioner about the sale permission of the aforesaid land in terms/compliance of Clause 6 of the Agreement in question.

15. It is contended on behalf of the petitioner that the dispute between the parties is purely of a legal nature and since the complainant had issued legal notice under Section 80 CPC to which she did not receive any reply, she ought to have filed a suit under the provisions of the Specific Performance of Contract Act, 1872 but having full knowledge that limitation period of filing the civil suit being over in the year 2018, the complainant resorted to the instant complaint petition in order to secure her civil remedy through a criminal process, which is nothing but an abuse of the process of the court.

16. In support of aforesaid contention, the learned Senior Counsel has referred to the decision of the Hon'ble Supreme Court in **Anand Kumar Mohatta and Another Vs. State (Govt. of NCT of Delhi) Department of Home & Another** reported in **AIR 2019 SC 210** wherein the Hon'ble Supreme Court referred to its own decisions in **Indian Oil Corporation Vs. NEPC India Ltd. and Others** wherein it was held that any effort to settle civil disputes and claims which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and discouraged.

17. In the said judgment reference was also made to the decision in **State of Karnataka Vs. L. Muniswamy and Others** reported in **(1977) 2 SCC 699**, wherein it was held as follows:-

“7.....In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is 6 1977 (2) SCC 699 designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment of persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice.....”

18. In ***Devendra & Others Vs. State of UP and Another***, reported in **(2009) 7 SCC 495** cited on behalf of the petitioner, it was held that when a dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.

19. In ***Joseph Salvaraj A. Vs. State of Gujarat and Others*** reported in **(2011) 7 SCC 59** which has also been pressed into service on behalf of the petitioner, it has been held that in order to constitute an offence under Section 406 concerning criminal breach of trust or under Section 415 IPC concerning cheating, it is inbuilt that there has to be a dishonest intention from the very beginning which is *sine qua non* to hold the accused guilty for commission of the said offence.

20. It is submitted that on a plain reading of the complaint petition, no such guilty

intention from the very inception is discernible and therefore, the learned Court below has committed gross illegality in taking cognizance of the offence under Section 406 IPC.

21. I have given my anxious considerations to the submissions of learned Senior Counsel for the petitioner with reference to the document/material on record as well as the authorities cited on behalf of the petitioner referred to above.

22. On perusal of the complaint petition, I find sufficient force in the argument of learned Senior Counsel that the allegations made therein, even if it is true would constitute a dispute purely of a civil nature as the very relationship between the parties arose from an agreement annexed as Annexure-B which is the agreement for sale of the land:

“AGREEMENT OF SALE OF LAND

*This agreement is made on this the 25th day of February, 2015 at Guwahati,
BETWEEN-*

Dr. Neena Sharma, wife of Dr. Indrajit Sharma, resident of 68, Dr.B Barooah Road, Guwahati-781007, PS. Paltanhazar, District Kamrup, Assam-hereinafter called the SELLER which term and expression shall include her heirs, executors and administrators on ONE PART

AND

Smti Jupitora Baruah, wife of Sri Rajib Baruah, resident of Pension Para Lane, Silpukhur, Guwahati-781003, PS. Chandmari, District Kamrup, Assam-hereinafter called the PURCHASERS which term and expression shall include her heirs, executors and administrators on the OTHER PART

WHEREAS the First Party being known to the Second Party proposes the Second Party to sell a plot of land measuring 1 (One) Bigha, situated at village Patarkuchi, PS. Khetri under Mouza Panbari morefully described in Schedule below

WHEREAS the Second Party agrees to the said proposal on terms and conditions mentioned:-

“NOW THIS AGREEMENT WITNESSETH AS FOLLOWS

- 1) That the total consideration of money to be paid by the Second Party/Purchasers to the First Party/Seller is Rs. 5,50,000/- (Rupees five lac fifty thousand) only for the land described in schedule below.*
- 2) That the Second party has paid to the First party the agreed amount as full and final payment for the land described in schedule below.*
- 3) That the First party has handed over absolute and clear possession of the land to the Second party.*
- 4) That it is mutually settled that the Firm Party/Seller will execute and register the sale deed in respect of the land described in the schedule below in favour of the Second Party/Purchaser within a period of 6 months from today i e, the execution and signing of this agreement.*
- 5) That it is hereby agreed that the First Party/Seller will make necessary arrangement for obtaining necessary sale permission from competent authorities in respect of the land described in the schedule below with active participation of the Second Party.*
- 6) That it is hereby agreed that the Second Party/Purchasers will bear necessary expenses for stamp duty and registration of sale deed.*
- 7) That it is hereby agreed that if after execution of this agreement it is found that there is any defect in the Title of the First Party in respect of the land described in Schedule below or the said property is found encumbered in any manner then the First Party will be bound to return the entire money to the Second Party.*
- 8) That the words First Party and Second Party herein Contained shall also convey to their legal heirs, successors, trustees and assigns as parties themselves.*

SCHEDULE OF LAND

Land measuring 1 (One) Bigha, covered by Dag no. 189 of K P.Patta No. 50 of village Patarkuchi under Mouza Panbari, in the District of Kamrup, Assam and bounded as follows:-

*North :Forest Land
South :Gopi Rahang
East :Dr. Indrajit Sharma
West : Forest Land*

Witnesses:

*Signature of Seller
Signature of Purchaser”*

23. As rightly contended by learned Senior Counsel, in case the petitioner had failed to perform her part of the contract, it was very much open for the complainant to approach the Civil Court for specific performance of contract and in fact, that was the only available option for the complainant. But having failed to do so within the period of limitation, it appears that the complainant/respondent has approached the criminal court by way of a complaint petition and the further allegation of having paid another sum of Rs. 2 lakhs to the petitioner certainly appears to be an afterthought, inasmuch as, no such stipulation is reflected in the Annexure-B Agreement between the parties.

24. In ***Iqbal Alias Bala and Others Vs. State of Uttar Pradesh and Others*** reported in **(2023) 8 SCC 734**, the Hon'ble Supreme Court observed at paragraphs 9, 10 and 11 as follows:

“9. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the court owes a duty to look into the FIR with care and a little more closely.

10. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc, then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the court

to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.

11. In frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

25. In the instant case, having taken into account the overall circumstances leading to the initiation of the complaint and the attending circumstances in the form of the Annexure-B Agreement between the parties, this Court is persuaded to hold the view that allowing further proceedings to continue would amount to an abuse of the process of the law as the dispute between the parties is purely of a civil nature.

26. In view of the above discussion, the criminal petition stands allowed and the Complaint Case No. 1970/2019 dated 16.05.2019 and Order dated 01.11.2019, passed by the Court of learned Judicial Magistrate First Class (JMFC), Kamrup(M), against the present petitioner as well as the proceedings initiated thereunder are hereby quashed.

27. The Criminal Petition stands disposed of.

28. Send back the TCR.

JUDGE

Comparing Assistant