

GAHC010136492023



2026:GAU-AS:5549

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

**Case No. : Crl.Pet./614/2023**

RENUBALA GHOSH AND ANR  
W/O LATE HARBHAJAN GHOSH  
R/O HILL LINE COLONY  
WARD NO. 1,  
BADARPUR TOWN,  
P.S. BADARPUR,  
DIST. KARIMGANJ, ASSAM

2: SMT. LILA SAHA  
W/O DULAL CH. SAHA  
R/O BADARPURGHAT

P.S. BADARPUR  
DIST. KARIMGANJ  
ASSA

VERSUS

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

2:SRI MORON KUMAR GHOSH  
S/O LATE HARENDRA KUMAR GHOSH  
R/O SHALEBARI  
SREENAGAR

P.O. BADARPUR

DIST. KARIMGANJ  
ASSAM  
PIN NO. 788806

**Advocate for the Petitioner : MS. R CHOUDHURY, MRS. S ROY**

**Advocate for the Respondent** : PP, ASSAM, N HASAN(R-2),F. SHAHIN,P SINGH(R-2),MR A HUSSAIN(R-2),MR. B K SEN (R-2),MS. U BARUAH (R-2),MR. T U LASKAR (R-2)

**:::BEFORE:::**

**HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA**

**Date on which judgment is reserved** :N/A

**Date of pronouncement of judgment** : 23.04.2026

**Whether the pronouncement is of the Operative part of the judgment** : NA

**Whether the full judgment has been Pronounced** : Yes

**Judgment & Order(CAV)**

*(Sanjeev Kumar Sharma,J)*

Heard Ms. R Choudhury, learned counsel for the petitioner and Mr. B.K. Sen, learned counsel for the respondent.

**2.** This criminal petition has been instituted seeking quashing of the order dated 11.01.2023 passed by the learned Additional Chief Judicial Magistrate, Karimganj in G.R. Case No. 198/2020 (PRC 90/2023) by which the learned Additional Chief Judicial Magistrate, Karimganj took cognizance of the offence under Section 447/427/294/34 IPC against the petitioners as well as for quashing of all the subsequent orders passed by the order dated 11.01.2023, by

the Learned Additional C.J.M. Karimganj, in the said case.

**3.** The Opposite party No.2/Respondent lodged an FIR before the Badarpur Police Station against the present petitioners alleging that on 21/01/2020 at about 12.30 p.m. the accused persons trespassed into the tilla land possessed by the complainant situated at Santi Niketan Road and damaged the trees and had tried to erect bamboo fencing. On protest by the complainant, the accused persons tried to kill him and used slang language. It was also mentioned in the FIR that regarding the disputed land, a case is pending before the Hon'ble Gauhati High Court and there is a status quo order.

**4.** On the basis of the said FIR, the case was registered as Badarpur Police Station case No. 26/2020 under Section 447/427/294/34 IPC.

**5.** On the basis of the FIR, the Police Started investigation of the case and submitted chargesheet against the present petitioners under Section 447/427/294/34 IPC. On receipt of the case' record from the learned Chief Judicial Magistrate, the learned Additional Chief Judicial Magistrate, Karimganj took cognizance of the offence vide order dated 11/01/2023 under Section 447/427/294/34 IPC against the petitioners and issued summons to them.

**6.** The complainant & 6 ors as plaintiffs had instituted a suit vide T.S. No.

136/1996 against the present petitioners before the learned Court of Civil Judge, (Jr.Div)-II, Karimganj praying for right title, interest and confirmation of possession of the suit land (which is also the land mentioned in the aforesaid FIR along with other reliefs and also for permanent injunction. The brief facts of the plaintiffs case is that their predecessor Late Harendra Kumar Ghosh, purchased the suit land by a registered sale deed dated 08.10.1974 executed by the owner of the suit land, namely Binoy Bhushan Mazumder. They are accordingly in possession of the suit land from the time of their predecessors by constructing their residential houses over the suit land. The vendor of the predecessor of the plaintiffs, Binoy Bhushan Mazumdar, purchased the suit land by a registered sale deed dated 07.01.1974 executed by the predecessors of the defendant nos. 1 & 2, namely late Hari Bhajan Ghosh. On the other hand, executed a registered kabuliyat dated 30.12.1972 in respect of the suit land in favour of the proprietor of the suit land, namely. Matin Uddin Ahmed Choudhury, and accordingly the predecessor of the defendant nos. 1 and 2 were in possession of the suit land.

**7.** The case of the present petitioners as defendants is that the defendant nos. 1 & 2 were the owner of the suit land by virtue of jote right purchased by their predecessor from Sachindra Nath Bhattacharjee vide Registered Document

dated 06/12/1969, got possession of the land and his name was recorded as tenant during the last settlement operation. The predecessor of the defendant nos. 1 & 2 also executed Kabuliyat vide Document No.3894 dated 30/12/1972 in favor of the landlord and had been in continuous possession of the suit land by growing fruit bearing trees including other trees over the suit land. The defendant nos. 1 & 2 were in need of money and accordingly they executed a bainama (Agreement) with the defendant no. 3 for sale of the suit land and accordingly the defendants prayed for dismissal of the suit.

**8.** The petitioners beg to state that the learned trial Court vide Judgment and Decree dated 19.12.2000 decreed the suit and the present petitioners being aggrieved preferred T.A. No. 4 of 2000 before the Court of the learned Civil Judge, (Senior Division), Karimganj who allowed the appeal by setting aside the Judgment and decree of the trial Court. The plaintiffs then preferred RSA No. 24/2007 before the High Court and during the pendency of appeal, the plaintiffs preferred an application under Order XLI Rule 27 CPC to adduce additional evidence so as to mark the sale deed dated 07.01.1974 as exhibit. The High Court remanded the case to the learned First Appellate Court and vide judgment and decree dated 21.08.2018, the first appeal was dismissed. Being aggrieved by the Judgment and Decree dated 21.08.2018, the present petitioners

preferred Regular Second Appeal being RSA No. 275/2019 which is pending before this Court.

**9.** The petitioners beg to state that the opposite party no. 2 during the pendency of the Regular Second Appeal tried to take possession of the suit land by illegally entering into the suit land on 09.07.2019, thereby cutting jungle and their tilla type garden i.e. the suit land. When the care taker of the petitioners protested to the illegal activities of the opposite parties, then they threatened with dire consequences. Finding no other alternative, the petitioners filed ejahar before the concerned police station on 15.07.2019, informing the activities of the opposite party no. 2. Although the FIR was filed but the Police did not register the same on the ground which was informed by the Police to the petitioners that since the contents of the FIR discloses Civil wrong and Civil proceeding is pending before the Hon'ble High Court, criminal proceeding would not lie. On the other hand, the Opposite party No. 2 also filed a FIR on 21.09.2019, subsequent to the filing of the FIR of the petitioner but the FIR of the Opposite Party no. 2 was registered by the Police as Badarpur P.S. Case No. 296 under Section 143/447/427/506 IPC against the petitioners.

**10.** The petitioners beg to state that under the said situation, they approached before the High Court by filing an application under order 39 Rule 1 & 2 read

with Section 151 of the Code of Civil Procedure, 1908. The application was numbered as I.A.(C) No. 3391/2019. The High Court on 19.12.2019, was pleased to issue notice upon the opposite parties returnable on 08.01.2020 and directed both the parties to maintain status quo. After passing of the Order dated 19.12.2019, the opposite party no. 2 lodged the instant FIR on 21.01.2020 and this time the Police personnel registered the FIR and started investigation.

**11.** The petitioners beg to state that the Opposite party no. 2 then filed one application being I.A.(C) No. 2320/2020 alleging that the petitioners violated the status quo order passed on 19.12.2019. The High Court on perusal of the FIR of the petitioners as well as the FIR of the opposite party no. 2 vide order dated 28.10.2021 disposed of the said injunction application with a direction to both the parties to maintain status quo in respect of the suit land.

**12.** At this point it would be appropriate to have a look at the FIR of the present case, which was lodged on 21.01.2020. The relevant portion of the said FIR is quoted herein below.

”Sir,

*I have the honour to state that on 20.01.2020, Monday at about 12.30 pm, the accused persons trespassed into tilla type land in our possession inherited from our deceased father situated at Jhum Basti, Shanti Niketan Road and forcibly cut down the trees and tried to take possession of the land and to put bamboo fencing. When I*

*resisted their activities, they tried to beat me and used filthy languages. I did not take action due to the fear of life and breach of public tranquility.*

*It is to be mentioned here that a case is pending before the Hon'ble High Court in respect of the tilla land and in the said case status order is passed.*

*It appears that the accused persons are trying to make chaos and take possession of the aforesaid tilla land illegally and as such me and my family members are feeling insecurity towards life and wealth."*

**13.** The case was investigated into and resulted in a charge sheet, and the learned Additional Chief Judicial Magistrate took cognizance of the offences under sections, 447/427/294/34 IPC against the present petitioners.

**14.** The learned counsel for the petitioners submitted that there is a long history of civil litigation between the parties in respect of the same suit land which is mentioned in the FIR, and the dispute between the parties is entirely of a civil nature and the present FIR has been lodged only to harass the petitioners with a view to provide a color of criminality to the dispute between the parties. It is also submitted that both the petitioners are aged ladies above 70 and 60 years of age and the petitioner No. 2 is also a cancer patient, and it is highly improbable that they committed the alleged offence and allowing criminal proceedings to continue against them would be an abuse of the process of the court.

In support of her submissions, the learned counsel for the petitioner has

relied upon the decision of the Hon'ble Apex Court in ***Dr. Sonia Verma & Anr Vs The State of Haryana & Anr*** reported in **2024 0 INSC 227**, wherein it has been held as follows:

*“14. in the considered opinion of this Court, the dispute herein, which forms the genesis of the criminal proceedings initiated by Respondent No. 2 is entirely civil in nature i.e., whether the Appellants are in lawful possession of the Suit Property or, in essence, whether the RSD is valid. To that extent, the Appellants have already taken recourse to the appropriate civil remedy to establish their claim before the Civil Court. The grievance of Respondent No. 2 i.e., whether the RSD is forged and fabricated is an issue that will be considered by the Civil Court while making its determination.*

*15. A closer examination of the surrounding facts and circumstances fortifies the conclusion that an attempt has been made by the Respondent No. 2 to shroud a civil dispute with a cloak of criminality. The following aspects of the case are pertinent to note: (i) Respondent No. 2 registered the Subject FIR subsequent to the filing of the Civil Suit and the filing of FIR No. 372/2022 by the Appellants; (ii) the chain of sale deeds produced by the Appellants contain identical descriptions of the Suit Property and yet Respondent No. 2 has pursued criminal action only against the Appellants and Sher Singh and not against Babu Lal and her husband; (iii) Respondent No. 2 has failed to contest the present matter before this Court; (iv) the admitted position that the Appellants were bonafide in their payment of rent before their alleged purchase of the Suit Property.*

*16. This Court in Paramjeet Batra v. state of Uttarakhand & Ors., Criminal Appeal No. 2069 of 2012 has expounded on the scope of exercise of power under Section 482 CrPC whilst dealing with similar matters:*

*"7. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether*

*a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court."*

**15.** Reliance has also been placed on another decision of the Hon'ble Apex Court in ***S.N. Vijaya Lakshmi Vs State of Karnataka*** reported in **2025 0 INSC 917**, wherein the Hon'ble Apex Court has held as follows:

*"33. Having heard learned senior counsel for the parties and after going through the material on record, the issue that emerges is as to whether the criminal case against the appellants should proceed. This has to be examined from two angles. Firstly, as to whether any criminal offence in the background of the factual position is made out to justify criminal proceedings against the appellants? Secondly, whether on the same cause of action, based on the afore-noted facts, both civil and criminal proceedings can simultaneously go on?"*

*42. Coming to the second question i.e., whether civil and criminal proceedings both can maintained on the very same set of allegations qua the same person(s), the answer stricto sensu, is that there is no bar to simultaneous civil and criminal proceedings. If the element of criminality is there, a civil case can co-exist with a criminal case on the same facts. The fact that a civil remedy has already been availed of by a complainant, ipso facto, is not sufficient ground to quash an FIR, as pointed out, inter alia, in *P Swaroopa Rani v M Hari Narayana*, (2008) 5 SCC 765 and *Syed Aksari Hadi Ali Augustine Imam v State (Delhi Admn.)*, (2009) 5 SCC 528. The*

*obvious caveat being that the allegations, even if having a civil flavour to them, must prima facie disclose an overwhelming element of criminality. In the absence of the element of criminality, if both civil and criminal cases are allowed to continue, it will definitely amount to abuse of the process of the Court, which the Courts have always tried to prevent by putting a stop to any such criminal proceeding, where civil proceedings have already been instituted with regard to the same issue, and the element of criminality is absent. If such element is absent, the prosecution in question would have to be quashed. In this connection, Paramjeet Batra v State of Uttarakhand, (2013) 11SCC 673 can be referred to:*

*'12.... Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court. (emphasis supplied)."*

**16.** Countering the aforesaid submissions, the learned counsel for the respondent then submitted that when an offence is made out on a plain reading of the FIR, and more so when, after investigation, a charge sheet has been submitted against the petitioners, there is no scope for invoking the power of the Court under section 482 CrPC to quash the criminal proceedings or the orders of taking cognizance.

**17.** The learned counsel has referred to the decision of the Apex Court in the case of ***P. Swaroopa Rani Vs M. Hari Narayana ALIAS Hari Babu*** reported in ***2008 5 SCC 765***, wherein it was held as follow:

*“11. It is, however, well settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case. (See M.S. Sheriff Vs. State of Madras<sup>1</sup>, Iqbal Singh Marwah Vs. Meenakshi Marwah<sup>2</sup> and Institute of Chartered Accountants of India Vs. Assn. of Chartered Certified Accountants”.*

**18.** Reference is also made to the decision of the Apex Court in the case of ***Kathyayani Vs Siddharth P.S. Reddy & Ors*** reported in ***20250 INSC 818***, wherein it was held as follows:

*“19. We now come to the issue of bar against prosecution during the pendency of a civil suit. We hereby hold that no such bar exists against prosecution if the offences punishable under criminal law are made out against the parties to the civil suit. Learned senior counsel Dr. Menaka Guruswamy has rightly placed the relevant judicial precedents to support the above submission. In the case of K. Jagadish vs.Udaya Kumar G.S. and Another, (2020) 14 SCC 552 this Court has reviewed its precedents which clarify the position. The relevant paragraph from the above judgment is extracted below:*

*"8. It is thus well settled that in certain cases the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law."*

20. In *Pratibha Rani vs. Suraj Kumar and Another*, (1985) 2 SCC 370 this Court summed up the distinction between the two remedies as under:

"21....There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred."

21. The aforesaid view was reiterated in *Kamaladevi Agarwal vs. State of W.B. and Others*, (2002) 1 SCC 555:

"17. In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings."

"23. The above precedents set by this Court make it crystal clear that pendency of civil proceedings on the same subject matter, involving the same parties is no justification to quash the criminal proceedings if a prima facie case exists against the accused persons."

**19.** What emerges from the aforesaid decisions cited on behalf of the rival parties is that the power under section 482 of the CrPC is to be exercised sparingly and while considering an application under the aforesaid provision, the

High Court is required to examine whether the essential ingredients of a criminal offence are present or not and care should be taken to see that a matter which is essentially of a civil nature has not been sought to be artificially given a cloak of criminality. There is no cavil with the proposition that on the same set of facts, both civil as well as criminal proceedings may be instituted, depending on the facts and circumstances of the case, and pendency of civil proceedings on the same subject matter involving the same parties is not sufficient justification to quash criminal proceedings if a prima facie criminal case exists against the persons. Both proceedings can proceed simultaneously depending upon the facts and circumstances of each case.

**20.** In the case of ***Pradeep Kumar Kesarwani Vs The State of Uttar Pradesh & Anr*** reported in ***2025 LiveLaw(SC) 880***, the Apex Court held as follows:

*“17. The duty of the court in cases where an accused seeks quashing of an FIR or proceedings on the ground that such proceedings are manifestly frivolous, or vexatious, or instituted with an ulterior motive for wreaking vengeance was delineated by this Court in Mohammad Wajid v. State of U.P., reported as 2023 SCC OnLine SC 951. We may refer to the following observations:*

*“34. 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. 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. 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 of the 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."*

**21.** As stated by the petitioners in the present petition, the respondents herein as plaintiffs had instituted the title suit against the present petitioners before the

court of the Civil Judge Junior Division-II Karimganj, praying for right title, interest and confirmation of possession of the suit land way back in the year 1996. The present FIR is of the year 2020 alleging criminal, trespass, damage to property, etc.

**22.** On the date of the alleged offence, i.e., on 20.01.2020, the present petitioners along with 3-4 persons allegedly criminally trespassed into the land of the complainant at Jumbasti, which was possessed by the father of the informant, and forcibly cut down the trees and tried to take possession of the land and put up bamboo fencing and with the intention to capture the land of the informant.

**23.** Therefore, the facts alleged in the present FIR are not the same as the ones on which the respondents as plaintiffs had instituted the aforesaid title suit seeking declaration of right, title, interest and confirmation of possession of the suit land. Therefore, the instant criminal proceedings cannot be said to have arisen on the same set of facts in respect of which a civil proceeding was instituted.

**24.** As far as the falsity of the allegations made in the FIR is concerned, that is a matter to be decided by the learned trial court and as to the question of whether the present FIR has been actuated by malice with the sole purpose of

wreaking vengeance upon the petitioners, it is noticed that, as per the petitioner own statements of the petitioners made in the present criminal petition, they approached before the High Court by filing an application under order 39 Rule 1 & 2 read with Section 151 of the Code of Civil Procedure, 1908. The application was numbered as I.A.(C) No. 3391 of 2019. The High Court on 19.12.2019 issued notice upon the opposite parties returnable on 08.01.2020 and directed both the parties to maintain status quo. After passing of the order dated 19.12.2019, the opposite party no. 2/respondent, lodged the instant FIR on 21.01.2020 and this time the Police personnel registered the FIR and started investigation. The petitioners beg to state that the Opposite party no. 2/respondent then filed one application being I.A.(C) No. 2320/2020 alleging that the petitioners violated the status quo order passed on 19.12.2019. The High Court on perusal of the FIR of the petitioners as well as the FIR of the opposite party no. 2/respondent vide order dated 28.10.2021 disposed of the said injunction application with a direction to both the parties to maintain status quo in respect of the suit land.

**25.** Therefore, the fact that the respondents herein had filed the IA No. 2320/2020 alleging that the petitioners violated the status quo order passed on 19.12.2019 points to the circumstances that the FIR lodged against the

petitioners out of which the present petition has arisen is not entirely baseless.

**26.** There is, of course, no doubt in the mind of this court that based on the allegations made in the present FIR, taken at their face value, it cannot be said that no criminal offence whatsoever has been made out. Furthermore, it also cannot be said that the allegations made therein are inherently improbable merely on account of the fact that the accused therein that is the present petitioners are aged ladies, inasmuch as it is alleged that they had trespassed into the land of the respondent along with 3-4 other persons. In any case, that is an aspect of the case that is to be determined at the trial.

**27.** Having regard to the discussion made above, I am of the view that the present is not a fit case for invocation of the powers of this court under section 482 CrPC.

**28.** Accordingly, the petition is held to be devoid of merit and is accordingly dismissed.

**JUDGE**

**Comparing Assistant**