

GAHC010235172022



2025:GAU-AS:8065

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

Case No. : Crl.Pet./1264/2022

DR. FARHIN IQBAL
S/O MD. ALI
FLAT 2A, R.K ENCLAVE, LILA BARUAH LANE,
AMBARI, GUWAHATI- 781001
DIST. KAMRUP (METRO), ASSAM

VERSUS

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

2:SURANJANA HAZARIKA
W/O MR. DEBABRATA CHOWDHURY
PERMANENT RESIDENT OF HOUSE NO. 22
2ND FLOOR
PALASH PATH

SENDURI ALI
RG BARUAH ROAD

GUWAHATI - 781024 AND RESIDENT OF 361
ARKELI ROAD

GUELPH
CANAD

Advocate for the Petitioner : MR. A M BORA, MRS S SAIKIA,MR. R J DAS
Advocate for the Respondent : PP, ASSAM,

Linked Case : I.A.(Crl.)/312/2023

SURANJANA HAZARIKA

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| For the Respondent No.2: | Mr. A. Phukan, Advocate. |
| Date of Hearing | : 13.05.2025. |
| Date of Judgment | : 18.06.2025. |

JUDGMENT AND ORDER (CAV)

Heard Mr. A.M. Bora, the learned senior counsel assisted by Mr. R.J. Das, the counsel appearing for the petitioner. Also heard Mr. B. Sarma, the learned Addl. Public Prosecutor, Assam (Respondent No.1) as well as Mr. A. Phukan, the learned counsel representing the Respondent No.2.

2. This is an application under Section 482 of the Criminal Procedure Code (CrPC) praying for quashing the criminal proceedings of C.R. No.4822 of 2022 pending in the court of the learned Judicial Magistrate First Class, Kamrup(M), Guwahati.

3. Late Jatin Hazarika was admitted at Nemcare Hospital at Guwahati. The petitioner Dr. Farhin Iqbal was working in that hospital as a Cardiologist. Dr. Farhin Iqbal had conducted ECHO-Cardiogram upon late Jatin Hazarika and gave some reports. Thereafter, late Jatin Hazarika was shifted to a hospital outside Assam where he breathed his last.

4. After the demise of late Jatin Hazarika, the Respondent No.2 being his daughter, had lost all those ECHO-Cardiogram reports. Therefore, she approached the petitioner for providing her duplicate copies. Accordingly, duplicate copies of the ECHO-Cardiogram reports were given to the Respondent No.2.

5. This time, it came to the notice of the Respondent No.2 that the ECHO-Cardiogram reports prepared by Dr. Farhin Iqbal had some corrections. For example, in the ECHO-Cardiogram reports, being Call Centre No.88 22 201 201 showed that the LVEF (Teich) 42%. But in the duplicate copy given to the respondent no.2, the 42% was made 43% by hand. Similarly, in Call Centre No.88 22 201 201 in the LVEF (Teich) 55% but it was made 55.1%. The correction was made by hand. There were some

other corrections also.

6. Therefore, the Respondent No.2 filed an FIR before police alleging forgery committed by Dr. Farhin Iqbal. After investigation, police filed a Final Report stating that no materials could be collected against the present petitioner.

7. The Respondent No.2 filed a petition before the Judicial Magistrate First Class praying for sending the case to police of Bhangagarh P.S. for further investigation. Accordingly, the matter was sent back to Bhangagarh Police Station. Again, police filed a Final Report. Therefore, the C.R. No.4822 of 2022 came into being.

8. Mr. Bora has submitted that the definition of forgery as contained in Section 463 of the Indian Penal Code says that whoever makes a false document or false electronic record or part of the document or electronic record with intention to cause damage or injury to the public or to any person or to support any claim or title or to cause any person to part with property or to enter into any express or implied contract or with intent to commit fraud or that fraud may be committed, commits the offence of forgery. According to Mr. Bora, treatment to late Jatin Hazarika was provided on the basis of the original ECHO-Reports. After the demise of late Jatin Hazarika, those duplicate copies were given by the petitioner where there were some handwritten corrections of datas. Mr. Bora has submitted that those ECHO-Cardiogram reports given for the second time in duplicate had no potential to commit any harm to the society or to any person.

9. Mr. Bora has relied upon the judgment of the Supreme Court that was delivered in *Mohd. Ibrahim v. State of Bihar*, (2009) 8 SCC 751. Paragraphs 13, 14, 15 and 16 are quoted as under:

“**13.** The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion

with the other accused.

14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.
2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.
3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a "false document", if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses.

15. The sale deeds executed by the first appellant, clearly and obviously do not fall under the second and third categories of "false documents". It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of the complainant's land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor, colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed."

10. Mr. Phukan has submitted that there cannot be a mini trial in the High Court exercising the power under Section 482 of the CrPC. According to Mr. Phukan, court cannot nip a complaint in the bud particularly when statement under Section 200 of

the CrPC has already been recorded. In order to buttress his point, Mr. Phukan has relied upon decision of the Hon'ble Supreme Court that was delivered in *C.B.I. v. Aryan Singh*, reported in *2023 SCC OnLine SC 379*. Paragraphs 6 and 7 of the said judgment are quoted as under:

“6. From the impugned common judgment and order [*Aryan Singh v. CBI*, 2022 SCC OnLine P&H 4158] passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned trial court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482CrPC, the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency.

7. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482CrPC, the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”.

11. I have considered the submissions made by the learned counsel of both sides.

12. The trial court took cognizance of the offences under Sections 417, 465 and 468 of the Indian Penal Code. Now, a brief visit to these sections may be fruitful. Sections 417, 465 and 468 read as under:

Section 417- Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Section 465- Whoever commits [forgery](#) shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 468- Whoever commits [forgery](#), intending that the document or electronic record¹ forged shall be used for the purpose of [cheating](#), shall be

punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

13. Section 415 of the IPC defines the offence of cheating. It states that whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property is said to cheat.

14. Section 463 of the IPC defines forgery. It states that whoever makes any false document or false electronic record or part of a document or electronic record, with intention to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, with intent to commit fraud or that fraud may be committed, commits forgery.

15. The basic elements of forgery are- (1) the making of a false document or part of it and (2) such making should be with such intention as is specified in the Section viz namely- (a) to cause damage or infringe to (i) the public or (ii) any person; or (b) to support any claim or title; or (c) to cause any person to part with property, or (d) to cause any person to enter into an express or implied contract; or (e) to commit fraud or any fraud may be committed. [(see *Sushil Suri v. Central Bureau of Investigation*, reported in (2011) 5 SCC 708)].

16. Above all those things, the most important aspect of a criminal case is the existence of *mens rea* i.e. criminal intention. The petitioner being a doctor, treated late Jatin Hazarika on the basis of original ECHO-Cardiogram reports. After the demise of late Jatin Hazarika, his daughter lost those reports. Therefore, she approached the petitioner for giving her duplicate copies of her father's ECHO-Cardiogram reports. The

petitioner gave those duplicate reports. But before handing over the said reports to the Respondent No.2, the petitioner manually made some corrections in the data available in the reports. Does this act amount to cheating or forgery?

17. The answer to the said question must be given in negative. After the demise of Jatin Hazarika, these reports had lost all their values. These are of no value, except for insurance claims or similar matters.

18. The Respondent No.2 while filing the complaint case never alleged any prior enmity with the petitioner, which might lead to handing over some manually corrected electronic records. In order to constitute an offence, there must be a criminal intention to cause damage or harm to the society or to any particular person or persons. In my considered opinion, the complaint lodged by the Respondent No.2 failed to establish a *prima facie* criminal case against the present petitioner.

19. In *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604 the Supreme Court has laid down the guidelines as to when the power under Section 482 of the CrPC can be exercised by the High Court. Paragraph 102 of the judgment reads as under:

“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.”

20. Coming back to the case in hand, this Court is of the opinion that the ratio laid down in *Bhajan Lal* (supra) is squarely applicable in the present case. Allowing the criminal proceedings of C.R. No.4822/2022 to continue before the trial court will be nothing but an abuse of the process of the court, because there is no possibility of future conviction in this case. This Court finds that this is a fit case for exercising the power under Section 482 of the CrPC. Accordingly, the criminal proceedings of C.R. No.4822/2022 is quashed and set aside.

Criminal Petition along with the connected Interlocutory Application (Crl.) is disposed of.

JUDGE

Comparing Assistant