

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE:
SONITPUR AT TEZPUR**

PRESENT : Smt. M.R. Sharma
Additional Sessions Judge
Sonitpur, Tezpur

CRIMINAL REVISION NO. 2 (S-1) OF 2014

[Revision under Section 397/399 CrPC against the Order dated 12-12-2013 passed by Smt. P. Shyam, learned Judicial Magistrate, First Class, Tezpur, in connection with C.R. Case No. 236 of 2013.]

1. Md. Allauddin Ahmed
2. Md. Samsuddin Ahmed

Both are resident of village Ghahi Islampur
and Ghahigaon respectively.
P.S – Sootea, Dist - Sonitpur **Petitioners**

-VERSUS-

The State of Assam **Opposite Party**

A P P E A R A N C E

For the petitioner : Sri M. Islam, Advocate

For the Opposite Party : Smt. R. Chakravorty,
Addl. Public Prosecutor

Date of Hearing : 05-03-2014, 07-05-2014

Date of Judgment : **21-05-2014**

J U D G M E N T

This Criminal Revision arose on a petition filed under Section 397/ 399, Cr.P.C. challenging the legality and correctness of the order, dated 12-12-2013 passed by Smt. P. Shyam, learned Judicial Magistrate, First Class, Tezpur, in connection with C.R. Case No. 236 of 2013.

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2. The case of the complainant-petitioners, in brief, is that they filed CR Case No. 236 of 2013 which was registered and forwarded to the Court of Judicial Magistrate, First Class, Smt. P. Shyam. Thereafter the said learned Judicial Magistrate recorded the statements of the complainants and took cognizance of the offence u/s 420 / 406 / 34 against the accused persons Musstt. Nazma Begum and Smt. Chenimai Hazarika. But no case was made out against accused Smt. Bharati Konwar, Circle Officer of Naduar Revenue Circle, Sootea.

3. Being highly aggrieved and dissatisfied with the impugned order dated 12-12-2013, passed by the learned trial Court, the petitioners have preferred this present revision on the following grounds :

i). That the impugned order, dated 12-12-2013 of the learned trial Court is against the established principles of law and equity;

ii). that the all the three accused persons are equally responsible for cheating and criminal conspiracy and therefore accused Smt. Bharati Konwar should not be given free hand in the case.;

iii) that the registration of Sale Deed completed only when accused Smt. Bharati Konwar put her signature in the said Sale Deed. Therefore the impugned order dated 12-12-2013 is illegal and such type of activity will help the criminal minded persons;

iv) that in this case main duty of the accused No. 3, Smt. Bharati Konwar was that to obey the order of the Deputy Commissioner, Sonitpur in which permission was given for sale and purchase of plot of land measuring 1 (one) katha only ;

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v) that accused Smt. Bharati Konwar being guilty must have face trial for misconduct of her official duty vested on her;

vi) that the learned Judicial Magistrate, First Class, committed grave error in passing the impugned order;

Under the above facts and circumstances, the Revision Petitioners have prayed to admit this petition and after hearing the petition set aside the impugned order, dated 12-12-2013 of the learned trial Court below, and also to direct the Judicial Magistrate, First Class to issue summons to the accused No. 3 along with accused Nos. 1 and 2 of the complaint petition.

4. On going through the materials on record as well the lower Court record, it is seen that the impugned order against which this revision has been filed shows that the learned trial Court from the statements of the Complainants and perusal of the case record prima facie found a case u/s 420 / 409 / 468 / 34 against the accused Nazma Begum and Smt Chenimai Hazarika. But no offence was found to be made out against accused Smt. Bharati Konwar. In the Complaint petition it has been stated that the above named accused persons along with Smt. Bharati Konwar, Circle Officer, Naduar Revenue Circle, Sootea was also involved in the conspiracy to include 14 lessas over and above the 1 (one) katha land agreed to be sold by the complainant to the accused persons. It is also stated in the Complaint petition that when the matter was informed to the Circle Officer Smt. Bharati Konwar on 21-12-2012 she had assured them that the same was done by mistake and would be rectified very soon. It is also stated again on 25-03-2013 when the

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notice for giving possession of the land was received by the complainant, it was seen that land was retained as 1 K. 14 L.

5. Learned trial Court had recorded the evidence of the complainant u/s 200 Cr.P.C. and also the evidence of witnesses u/s 202. It is revealed that after receiving the notice to hand over possession the Circle Officer had given an order for cancellation of the Sale Deed was also made. It is not clear from the materials on record as to whether the deed was cancelled or not, and it is also not evident from the record that whether the said 1K 14L land were already handed over in possession of the accused persons No. 1 and 2. There is also a photo copy of document objecting to the process of 'Namjari' in the name of the accused persons No. 1 and 2 of the total land of 1K 14L.

6. I find that the learned trial Court had not committed error in not taking cognizance against Smt. Bharati Konwar, Circle Officer, Naduar Revenue Circle, as from the materials on record no sufficient materials had come forward against her to have committed the offence u/s 420 / 406 / 34 IPC. The materials on record do not show that Smt. Bharati Konwar is fully responsible for cheating and criminal conspiracy in her capacity as a Sub-Registrar in the Sale Deed. The Revision Petitioner had taken up a ground that accused No. 3, Smt. Bharati Konwar was duty bound to obey the order of Deputy Commissioner, Sonitpur, in which permission was given for sale and purchase of plot of land 1 (one) katha only, but the materials on record also show that after the Sale Deed on the petition by the complainant and order for cancellation of Deed was also made. So, the misconduct and criminal conspiracy by the accused No. 3,

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Smt. Bharati Konwar has not come out prima-facie from the materials on record. The learned trial Court has not committed any error in passing the said order that no prima-facie evidence was found against the accused No. 3, Smt. Bharati Konwar. The ingredients of Section 420 / 468 / 409 IPC are matters of evidence and so, at this stage of taking cognizance the learned trial Court had not committed any error in passing the order dated 12-12-2013, and I find no ground to interfere the same.

7. Accordingly, the revision Petition is **dismissed** on contest.

The Revision Petition is disposed of.

This judgment is given under my hand and the seal of this Court on this **21st day of May, 2014**.

M Sharma

(M.R. Sharma)
Additional Sessions Judge
Sonitpur : Tezpur

Dictated and corrected by me
And every page bears my signature.

M Sharma

(M.R. Sharma)
Additional Sessions Judge
Sonitpur : Tezpur

Transcribed and typed on dictation by me –

I. Goswami
21/5/14
(I. Goswami)
Stenographer