

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 343 of 2015

1. Bhagwat Prasad Gupta, son of late Jagannath Gupta, aged about 74 years, resident of Arjunda, Police Station Arjunda, Distt. Balod (C.G).
2. Dipesh Kumar Jain, son of Anil Jain, aged about 28 years, resident of village Arjunda, District Durg (C.G) at present resident of Rishabnagar, Durg, District Durg (C.G).

---- Petitioners

Versus

1. State of Chhattisgarh, through the Station House Officer, Police Station City Kotwali, Durg, District Durg,
2. Harjinder Singh, aged about 52 years, son of Ravel Singh, resident of Nagpur Naka, behind Kakkad Auto, Rajnandgaon, District Rajnandgaon (C.G).

---- Respondents

For the Petitioners	:	Mr. Goutam Khetrapal, Advocate.
For Respondent No.1	:	Mr. Arvind Shukla, Dy. Govt. Advocate.
For Respondent No.2	:	Mr. Punit Ruparel and Mr. Mandeep Singh, Advocates

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

19.08.2015

1. The challenge in this petition is to the order dated 19.03.2015 passed in complaint case no.2584/2013 by the Judicial Magistrate, First Class, Durg, by which, the cognizance has been taken by the Court under Section 424, 467, 468, 471 & 120-B of IPC.
2. Counsel for the petitioner would submit that Petitioner No.1 namely Bhagwat Prasad Gupta and Petitioner No.2 Dipesh Kumar Jain have been inculpated in this case being the purchasers of a piece of land bearing Khasra No.1151 admeasuring 0.19 hectares. The land is situated at village Khokha. It is contended on behalf of counsel that

they being bona-fide purchasers and having purchased the land for a value, the petitioners have been wrongly inculpated in this case. It is stated that the land was sold by respondent No.2 Harjinder Singh through his power of attorney holder Smt. Manjit Kaur, wife of Harjinder Singh who was identified by Sunil Benmecha and Sunil Jain. It is, therefore, contended that the petitioners being the bonafide purchasers cannot be inculpated in the complaint. It is further contended that the entire complaint is registered on the basis of statement of Harjinder Singh Bhatia whose statement according to the deposition sheet was recorded on 10th March, 2014 but the order sheet would show that on 10.03.2014 no statement was recorded. He further submits that the statement of Harjinder Singh do not contain the signature of the Magistrate as contemplated u/s 275(4) of Cr.P.C., therefore, the cognizance so taken on such basis would be completely null and void as it will not satisfy the requirement of Section 200 of Cr.P.C. which mandates the examination of the complainant. He would further submit that in absence of any signature of the Magistrate, in the eye of law, it would not amount to any statement before the Court thereby to act upon it. Therefore, the cognizance itself is devoid of merits and it requires to be quashed at the threshold against the petitioners.

3. Per contra, learned counsel appearing on behalf of the complainant/ respondent No.2 herein would submit that the property which stood in the name of complainant Harjinder Singh for which no power of attorney was either executed in favour of Manjit Kaur or Jasbinder Kaur. He would submit that some-one falsely personified to execute the sale deed and these facts came to fore after taking out the copy of sale deed. It is contended that it came to their notice that accused Jasbinder Kaur had executed the sale deed by falsely personifying herself as Manjit Kaur. It is further submitted that the

property worth Rs.5 crores has been sold for a song of Rs.5 lakhs. Consequently both the petitioners as also the persons who were party to the sale deed conspired to execute the sale deed.

4. The original complaint case in this case was called by this Court. Perusal of the case file of the original complaint would go to show that it contains a statement of Harjinder Singh Bhatia wherein the date of recording of such statement is mentioned as 10th March, 2014. The original deposition of Harjinder Singh Bhatia does not contain the signature of the Magistrate. The further witnesses namely Kawaljit Singh and Manjit Kaur were examined on 06.06.2014 and those statements recorded in deposition sheet contain the signatures of the witnesses as also the Magistrate. Section 275(4) of Cr.P.C., governs the procedure of recording evidence in the warrant case. It purports that the evidence so taken shall be signed by the Magistrate and would be a part of record. In this case, the deposition sheet dated 10th March, 2014 of Harjinder Singh do not contain the signature of the Magistrate. Therefore, it do not satisfy the requirement of Section 275(4). A perusal of the order sheet, however, shows that on 10.04.2014 the statement of Harjinder Singh was recorded which is contained in the order sheet. The order sheet also bears the signature of Harjinder Singh at its margin. A perusal of the entire case file would show that the mistake is apparent on the face of record as the statement of complainant do not contain the signature of Magistrate as also the date of recording has wrongly been made but further perusal of the order sheet would show that the statement was recorded on 10.04.2014.
5. In view of such facts, since the statement of Harjinder Singh do not satisfy the requirement of statute u/s 275(4), it cannot be made basis to take cognizance.

6. In the result, cognizance taken on the basis of such statement would be null and void as it would be deemed that no statement was existing before the Court. Consequently, the cognizance taken against the petitioners on the basis of order dated 19.03.2015 is set aside.
7. Since no party should be prejudiced for the fault of Court and in the facts of this case, since the order sheets shows that the complainant was examined, the complaint is remitted back to the court below with liberty to the complainant to get himself examined afresh and the Court on such examination may pass the appropriate order on merits of case, in accordance with law.
8. Accordingly, the petition stands disposed of with the above observation.
9. The original case file be returned forthwith.

Sd/-

**GOUTAM BHADURI
JUDGE**