

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Misc. Petition No. 824 of 2016**

Umendra Ram S/o Alakh Ram Sahu, aged about 57 years, R/o Qtr. No. 5/B, Sadak 29, Sector 10, Bhilai Nagar, Tehsil and District Durg (CG).

---- **Petitioner**

**Versus**

1. State of Chhattisgarh Through Police Station Mohan Nagar, Durg, District Durg (CG).
2. Triveni Bai Wd/o Late Nammu Sahu, aged about 85 years, R/o Adyogik Nagar, Police Station, Mohan Nagar, Durg, Tehsil and District, Durg (CG).

---- **Respondents**

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For petitioner  
For respondent/State  
For respondent No.2

Shri TK Jha, Advocate.  
Shri Ashok Swarnakar, Panel Lawyer.  
Shri Avinash Chand Sahu, Advocate.

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**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**08/12/2016**

1. The present petition under Section 482 CrPC has been preferred seeking for quashment of order dated 11.07.2016 whereby the Chief Judicial Magistrate, Durg, in an unregistered case on a complaint under Section 156(3) CrPC has ordered for registration of FIR against the accused persons and for prosecuting further.
2. Brief facts of the case is that, the respondent No.2 in the instant case Smt. Triveni Bai is said to have filed a complaint along with an application under Section 156(3) CrPC for taking cognizance against the accused persons one of whom is the present petitioner for the offence under Sections 420, 467 and 468 IPC. The allegations made by the complainant in the said complaint is that, the alleged accused

persons is said to have got a fake sale deed prepared and got it executed on 10.05.2013 and the property which stood in the name of Triveni Bai was sold to one Smt. Pratima Borde.

3. The CJM, Durg, initially directed the police authorities of Police Station, Mohan Nagar, Durg to submit a report on the said complaint. The police authorities submitted its report stating that contents made in the complaint is false, baseless and incorrect. However, the CJM did not accept the report of the police authorities and proceeded further with the complaint and ordered the police authorities for registration of FIR and to investigate into the matter on 11.07.2016. It is this order which is under challenge in the present petition.
4. Learned counsel appearing for the petitioner submits that the action on the part of the CJM is nothing but a sheer misuse of judicial process of law and the court. The court below ought to have considered and appreciated the report of the police authorities and based on the report, should have first got himself convinced that there were sufficient material against the accused persons before ordering for registration of the FIR. According to him, it is a case where the present petitioner is not directly or indirectly involved in the commission of the alleged offence, yet the court below has ordered for registration of the offence against the present petitioner and the petitioner would unnecessarily be dragged into the litigation and would have to undergo the entire trauma of facing trial for no fault of his.
5. It was next contended that the only role assigned to the present petitioner is being a witness to an alleged sale deed executed between

Triveni Bai with one Pratima Borde. According to him, the said sale deed between Triveni Bai and Pratima Borde is still in force and as long as the same is not held to be illegal, fake for fraudulent, the petitioner cannot be subjected to prosecution and for the said reason the complaint ought to have been rejected by the court below. Even otherwise, according to the petitioner, it is a transaction between Triveni Bai and Pratima Borde or it would be a transaction to a person who had got the sale deed executed to Pratima Bai. The petitioner is only a witness to the sale deed and thus, it cannot be said that the petitioner is said to have committed an offence which would fall within the ambit of offence under Sections 420,467 and 468 IPC.

6. Counsel for the petitioner further alleges the fact that the land undisputedly was initially allotted on lease to Triveni Bai on 16.04.1970 and that subsequently on account of breach of conditions to the lease, the said allotment got cancelled somewhere in the year, 1978 and subsequently the superstructure on the said leased property which was constructed by Triveni Bai was sold to Pratim Borde on 10.05.2013. It was further contended by the petitioner that said Triveni Bai, the seller of the property had also received sale consideration for the said land by cheque and the said payment has also got credited to her account which shows that there was a complete transaction which took place between the seller Triveni Bai and the purchaser Pratima Borde. Therefore, the entire case of the complainant gets falsified and the present petition deserves to be allowed and as a consequence the complaint case also deserves to be set aside/quashed.

7. It was also submitted by the petitioner that once the police authorities have thoroughly investigated the matter and have reached to the conclusion that the complaint made by the complainant-respondent No.2 is false, baseless and incorrect, there was nothing further unusual based on which the court could have ordered for registration of the FIR. The said direction of the Magistrate for registration of FIR is nothing but a misuse of process of law as well as the court and is not sustainable.
8. Per contra, learned counsel appearing for the State submitted that order dated 11.07.2016 is by itself self explanatory and does not warrant any interference. According to her, the CJM has specifically assigned the reasons as to why he has not accepted the police report and have ordered for registration of FIR and for further investigation and that the Magistrate is fully competent and had jurisdiction to pass the said order and it cannot be found faulted with.
9. It was further submitted by the State that that even otherwise the instant petition under Section 482 CrPC is not sustainable for the reason that once the impugned order dated 11.07.2016 stands complied with and as is evident from the pleadings of the petitioner himself and FIR also having been lodged, there is nothing that further remains for adjudication in this case. If at all, if the petitioner is aggrieved by the registration of the FIR and the investigation being carried on, the same has to be challenged separately by way of a revision and not the petition under Section 482 CrPC. According to State counsel, since the registration of FIR is a revisable order, it would be the revision which ought to have been filed by the petitioner before the appropriate court

and not the petition under Section 482 CrPC. Thus, the petition deserves dismissal.

- 10.** Learned counsel for the respondent No.2 adopted the argument advanced by the State counsel. However, in addition, he adds the fact that it is a case where the case of the complainant all along was that she had never executed alleged sale deed on 10.05.2013 and that the said sale deed is fake document. Neither was there any cancellation of lease occurred at any point of time nor was there lease executed in favour of Pratima Borde. The complainant has specifically alleged in her complaint that the alleged sale deed by the respondent No.2 in favour of the Pratima Borde does not bear her signature and that she has not put her signature on any document whatsoever intending selling of property in favour of Pratima Borde.
- 11.** According to respondent No.2, it is a case where these facts are matter of evidence and which would have to be thrashed out by leading cogent evidence in support of its contention by either side. Thus, he also prayed for rejection of petition.
- 12.** Having considered the rival contentions put forth on either side and on perusal of record what clearly reflects is the fact that the Magistrate after receipt of police report having gone through the same found that there was certain discrepancies in the affidavit which was filed, inasmuch as, that the affidavit was dated 14.02.2008 but the seal and signature of the Notary was shown to be that of 13.02.2008 creating a doubt in the mind of the court in respect of veracity of that document. Likewise, the court also found that the signature of Triveni Bai on the

said document also looked suspicious further creating doubt in the mind of the court.

- 13.** Further, the court also found that there was no basis to the report of the police authorities holding that it was the signature of Triveni Bai on the sale deed. Under normal circumstances, the signature of Triveni Bai ought to have been obtained and thereafter the document i.e. sale deed ought to have been sent for handwriting expert who would have given opinion as to whether the signatures do belong to the same person or not. On these suspicious and doubtful document being on record, if the court below has disapproved the police report, it cannot be said that the court below has committed any error of law while ordering for registration of FIR. The law in this regard is well settled by a catena of decisions of Supreme Court as well as by the High Courts wherein it has been held that once the Magistrate is not convinced with the police report for reasons assigned, it can order for registration of the FIR and for further investigation of the matter.
- 14.** Thus, the present petition being devoid of merit is liable to be and is hereby dismissed.

Sd/-  
(P. Sam Koshy)  
**Judge**