

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Cr.M.P. No. 1223 of 2016**

Hajari Lal S/o Nekched, aged about 70 years, R/o Village Matiyadand, Thana Pendra, District Bilaspur, Chhattisgarh

---- Petitioner**Versus**

Santram Nayak S/o Bhuriya, aged about 45 years, R/o Village Matiyadand, Thana Pendra, District Bilaspur, Chhattisgarh

---- Respondent

For Petitioner : Shri Rajendra Ku. Patel, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****09/11/2016**

The present petition has been filed under Section 482 CrPC assailing the order dated 10.08.2016 passed in Criminal Revision No. 14/2016 by the Additional Sessions Judge, Pendra Road, District Bilaspur. The petitioner has also challenged the order dated 10.12.2015 passed by the JMFC, Pendra Road, District Bilaspur in Criminal Case No.762/2014.

2. Vide order dated 10.12.2015, the JMFC taking into consideration the evidence which has been led by the complainant-petitioner, reached to the conclusion that the complainant has not been able to establish by cogent evidence of any fraudulent transaction to have been taken place so as to implicate the respondent particularly under Sections 471 and 420 of IPC.

3. This order dated 10.12.2015 was further assailed in a revision registered as Criminal Revision No. 14/2016. The Revisional Court also vide impugned order dated 10.08.2016 has held that since the complainant has not been able to prove the fraud to have been committed by the respondent by leading proper

evidence both oral as well as documentary particularly by not leading evidence of the officials of the Revenue Department in this regard. Accordingly, the Revisional Court also rejected the revision petition affirming the order of the JMFC.

4. These two orders have been assailed by the petitioner in the instant petition under Section 482 CrPC.

5. Counsel for the petitioner submits that the evidence led before the Court below by the petitioner was sufficient to establish the alleged fraudulent act on the part of the respondent and the two Courts below ought to have properly appreciated the same and considered the evidence in its proper perspective without being too technical in not believing the contention of the petitioner and taking a view that the non examination of the officials of the Revenue Department had proved fatal for the complainant.

6. However, if we look into the records particularly the orders passed by the two Courts below what is alleged is that it is the complainant's case that there had been a fraud played by the respondent in as much as the respondent is said to have fraudulently taken possession over the property which otherwise falls in the possession of the petitioner. The Revisional Court as well as the trial Court both have taken a view that to prove the case of fraudulent transaction the petitioner ought to have produced cogent evidence particularly documentary proof that it was the respondent who had prepared the said documents with a clear intention of playing fraud with the petitioner. The two Courts below were of the view that the complainant ought to have got the documents examined from a hand writing expert and should have also examined the officials from the Revenue Department so as to establish his case before the Court below.

7. This Court while exercising the powers under Section 482 CrPC does

not find it to be a strong case calling for an interference with the two impugned orders passed by the two Courts below. It is settled position of law that when the complainant intends to allege allegation against the respondent and seeks for prosecution against him for criminal offence, it is the burden of the complainant himself to first establish his case by leading cogent evidence that there had been a fraud played with him and only then the Court could proceed further. However, the petitioner has failed to show any cogent evidence before the two Courts below by which it can be said that the respondent had played fraud with the petitioner.

8. For the aforesaid reasons, this Court does not find any strong case made out for interfering with the two impugned orders. Thus, the present Cr.M.P. being devoid of merit deserves to be and is accordingly dismissed.

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