

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**W.P.(Cr.) No. 303 of 2016**

1. Smt. Duliya Bai, W/o. Late Pyarelal, aged about 40 years,
  2. Ku. Gyan Bai, D/o. Late Pyarelal, aged about 23 years,
- Both are R/o. Village-Gahirabedi, P.S. - Gendatola, Tahsil – Chhuriya,  
District- Rajnandgaon (C.G.)

----Petitioners

**Versus**

1. State of Chhattisgarh, Through : Secretary, Department of Home (Police), Mahanadi Bhawan, New Mantralay, Raipur (C.G.)
  2. The Director General of Police, Police Head Quarter, Raipur (C.G.).
  3. The Superintendent of Police, Rajnandgaon, District – Rajnandgaon (C.G.).
  4. Station House Officer, Police Station Chhuriya, District – Rajnandgaon (C.G.)
  5. R.B. Quareshi, S/o. P.B. Qureshi, resident of Village-Shristika, Gali No.01, Kaurinbhata, District- Rajnandgaon (C.G.).
  6. Bisru Ram Sahu, S/o. Bisalik Ram Sahu,
  7. Vijay Kumar Sahu, S/o. Bisalik Ram Sahu,
  8. Mirchand Sahu, S/o. Bisalik Ram Sahu,
- The Respondent No. 6 to 8 are resident of Village- Pandipathra, Post Belargondi, Tahsil – Chhuriya, District – Rajnandgaon (C.G.).
9. Smt. Subhadra Bai, W/o. Rama, Resident of Kapil Chowk, Prakash Nagar, Chandrapur (Maharashtra).

---- Respondents

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| For Petitioners      | : Mr. R.K. Kesharwani, Advocate      |
| For Respondent/State | : Mr. Anil S. Pandey, Govt. Advocate |

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**Hon'ble Shri Justice Goutam Bhaduri**

**Order On Board**

**24/11/2016**

1. The instant petition has been filed by the petitioners for the following relief:-

“10.1 That, this Hon'ble Court may kindly be pleased to call for the entire records pertaining to case of the petitioners.

10.2 That, this Hon'ble Court may kindly be pleased to direct the respondent No.4 to investigate the matter and arrest the culprits/accused persons under Section 420/34 of I.P.C.

10.3 That, this Hon'ble Court may kindly be pleased to direct the respondent No.4 to decide the representation/complaint of the petitioners and to take proper action against the respondent No.5 to 9.

10.4 That, this Hon'ble Court may kindly be pleased to grant any other relief, as it deem fit.

10.5 Cost of the petition may also be awarded.”

2. The pleading in this petition is that in the year 2014, the petitioner No.1, Smt. Duliya Bai received money from the father of the respondent No. 6 to 8 and agreement was executed but actually instead of agreement, a sale deed was executed and at the time of alleged sale of land, the petitioner No.2, Gyan Bai was major about 20 years was not a party to the sale deed. Thereby the sale deed dated 10.09.2014 is fake and fictitious. It is further pleaded that undue advantage was extended and instead of projecting the sale deed it was shown to be an agreement and by force sale deed has been registered.
3. Learned counsel for the petitioners submits that alleging the facts the complaint was made to police on 21.06.2016 and 19.07.2016 to the Superintendent of Police, despite that, the FIR is not registered. He further submits that application was also addressed to the Collector and despite that offence is not registered, which is in violation of law laid down in case of Lalita Kumari Vs. Govt. of U.P. and others, reported in 2013 (5) M.P.H.T. 336 (SC).

4. Perused the documents filed along with the petition. The sale deed is filed as Annexure P/2 dated 10.09.2014, the sale deed shown to be executed by Duliya Bai. The petitioner No.2, Gyan Bai appears to be not a party to the said sale deed. Complaint (Annexure P-6) is on record addressed to the Superintendent of Police, Rajnandgaon dated 19.07.2016. Reading of such complaint it purports that the said alleged sale was not actually meant but it was a mortgage and instead mortgage, the sale deed has been registered, thereby fraud has been committed. Thereby by fabrication, fabricated sale deed is registered.
5. On reading the report made to the Superintendent of Police shows that, it is not a case of the petitioners that sale deed do not bear the signature of petitioners or the signatures are forged, instead the plea of the petitioners are that actually the sale was not executed but it was mortgaged.
6. Section 58 of Transfer of Property Act lays down the procedure for mortgage by conditional sale and its proviso clause reads that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which affects or purports to affect the sale.
7. Section 91 and 92 of Evidence Act also primarily bars the oral evidence in respect of written document to vary the conditions or contradicts the same. Prima-facie as per the report of petitioners the nature of transaction was other than a sale deed and it was mortgage. In view of this the remedy of petitioners appear to lie elsewhere instead of criminal prosecution.
8. Since the petitioners have admitted the fact that sale deed bears the signature of one of the petitioner, Duliya Bai, in view of the report

made to the police, it prima-facie do not make out a cognizable offence and the petitioner is free to challenge the sale before the competent Civil Court, if so advised.

9. Accordingly, the petition having no merit is dismissed at admission stage itself.

**Sd/-**  
**(Goutam Bhaduri)**  
Judge

Balram