

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No.1177 of 2016**

- Sunil Barmecha S/o Shri M. L. Jain, Aged About 50 Years R/o Dixit Bada, Apapura, Police Station City Kotwali, Durg District Durg Chhattisgarh

---- **Petitioner****Versus**

1. State Of Chhattisgarh & Anr. Through The Station House Officer, Police Station City Kotwali Durg, District Durg Chhattisgarh [Through In The Impugned Order The Respondent No.1 Is Not Party, But For The Adjudication Of The Present Case, The Respondent No.1 Is Necessary Party]
2. Harjindar Singh, S/o Ravel Singh, Aged About 50 Years R/o Nagpur Naka, Behind Kakkad Auto, Police Station City Kotwali, Rajnandgaon District Rajnandgaon Chhattisgarh

---- **Respondents**

For Petitioner	:	Shri Ashish Surana, Advocate
For Respondent/State	:	Shri D. R. Minz, Dy.GA
For Respondent No.2/Complainant:		Shri Mandeep Singh, Advocate

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****15/12/2016**

Heard on admission.

2. This petition has been filed by the petitioner for quashing criminal proceedings pending in the Court of Judicial Magistrate First Class, Durg, in Complaint Case No.2584/2013 (***Harjindar Singh vs. Jasvinder Kaur @ Pappi Kaur & Ors.***), wherein the trial Court, after recording preliminary statement of complainant's witnesses, has taken cognizance of commission of offence under Section 420, 467, 468, 471 & 120-B of IPC against the accused including the petitioner herein.

3. Learned counsel for the petitioner argued that institution of criminal proceedings against the petitioner is a serious matter and unless there are clinching and cogent material to make out a prima facie case, the petitioner could not be subjected to agony and hazard of criminal proceedings. Contention of learned counsel for the petitioner is that the only allegation in the complaint and in the preliminary statement of complainant's witnesses is that the applicant was one of the attesting witness of the sale deed, which was registered in the office of the Registrar, by which, the land belonging to the complainant was sold to other accused. There is no material that the petitioner himself derived any benefit out of the sale transaction. The land was purchased by the other accused. There is no material to show that the petitioner was paid any amount out of the total amount of sale consideration. Further submission of learned counsel for the petitioner is that the petitioner was not signatory to the alleged Power of Attorney, which is said to be forged. The transaction was carried out way back in the year 2006. In the preliminary statement, the complainant's witnesses have also stated that one of the accused-Jasvinder Kaur is related to complainant-Harjinder and his sister Manjeet Kaur. Further contention of learned counsel for the petitioner is that according to one of the complainant's witnesses, an attempt was made to arrive at settlement by execution of re-conveyance deed in respect of the same property, therefore, on the basis that the complaint was filed, it is not a case of commission of offence, but only a dispute of civil nature. Thus, only on the basis that the petitioner was an attesting witness of the sale deed, institution of criminal proceedings is an abuse of the process of law. It is lastly submitted that under the provisions of Section 67 & 68 of the Indian Evidence Act, sale deed is not required to be attested, therefore, there was no requirement of law. In support of its contention, learned counsel for the petitioner placed reliance on the judgment of this Court

in the case of ***Smt. Renuka Gupta and another vs. State of Chhattisgarh and others, 2014 Cr.L.J. 2659.***

4. On the other hand, learned counsel for the respondent No.2-Complainant submits that the power of attorney was a forged document as the complainant-Harjinder Singh has clearly stated that he never executed any power of attorney in favour of Manjeet Kaur. In her statement, Manjeet Kaur has also stated that there was no power of attorney executed in her favour and nor her brother sold the property to any one much less to the accused-Bhagwat Prasad Gupta and Dipesh Kumar Jain. Learned counsel for the complainant further submits that the sale deed shows the photograph of one of the accused Jasvinder Kaur and not of Manjeet Kaur and the present is not only a case of preparation of forged power of attorney in the name of Manjeet Kaur but also a case of cheating by impersonation because Jasvinder Kaur impersonating herself as Manjeet Kaur executed the sale deed, to which, the petitioner was an attesting witness. Hence, there is no illegality in so far as cognizance has been taken by the Court.

5. A bare reading of the complaint and the statement of preliminary witnesses reveals that there are serious allegations of cheating, fraud, forgery and impersonation under series of transactions. It has been alleged by the complainant-Harjinder Singh that he never executed power of attorney either in favour of Jasvinder Kaur or in favour of any other person nor sold his property. In the preliminary statement of witnesses of complainant, it has also come that Manjeet Kaur never sold property of her brother-Harjinder Singh-the complainant to any one much less to two of the accused Bhagwat Prasad Gupta and Dipesh Kumar Jain. There are serious allegations that one of the co-accused-Jasvinder Kaur impersonating herself as Manjeet Kaur, which is prima

facie seen from the copy of the sale deed and it also shows that the photograph of the some other lady, who is not Manjeet Kaur and by this transaction, available property were sold. The petitioner is one of the attesting witness to the whole transaction. He appeared as a witness of the transaction, in which, some lady allegedly co-accused Jasvinder Kaur impersonating herself as Manjeet Kaur sold property of the complainant on the strength of power of attorney, which is also said to be forged. In the preliminary statements, it has been stated that when the complainant enquired from the office of Registrar, the concerned power of attorney was also not available on record.

6. The aforesaid material placed before the Magistrate make out a prima facie case. The submissions, which have been made by learned counsel for the petitioner before this Court, are ordinarily a matter of enquiry during trial where the petitioner would be at liberty to raise defence, which are available to him under the law. At this stage, it cannot be said that the petitioner had no role to play in this case. Therefore, in the considered opinion of this Court, a prima facie case is made out subjecting the petitioner to trial along with other co-accused for alleged commission of offence. While there is no quarrel with the settled legal proposition as adumbrated by this Court in the case of **Smt. Renuka Gupta** (supra), proposition of law needs to be carefully applied to the facts and circumstances of each and every case in the light of material available on record. Consideration of this Court is based on the complaint, preliminary statements and alleged power of attorney as also the sale deed. Therefore, the aforesaid decision is not applicable in the present case.

7. In view of above, I am unable to hold that subjecting the applicant to trial would be abuse of the process of law. The power under Section 482 Cr.P.C. is to be exercised very carefully and with utmost caution in every case and cannot

it would be allowed to be converted into the appeal even before trial of a case where prosecution and defence are yet to lead their evidence. If prima facie case is made out, no fault can be found with the order passed by the Magistrate taking cognizance of the offence against the petitioner.

8. In the result, the petition is dismissed.

SD/-
(Manindra Mohan Shrivastava)
Judge