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HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 846 of 2016

Dhanraj Singh S/o Late Shri Jainandan Singh Chouhan, aged about 46 years, Occupation Advocate, R/o Barister Market, Ward No. 7, Akaltara, P.S. - Akaltara, Distt. Janjgir Champa, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh through, S.H.O., Police Station Akaltara, Distt. Janjgir Champa, Chhattisgarh.
2. Ritesh Singh S/o Late Shri Ram Khilawan Singh, aged about 38 years, R/o Pausara, P.S. Koni, Distt. Bilaspur, Chhattisgarh.
3. Gulab Devi W/o Late Shri Keshav Singh, aged about 67 years, R/o Akaltara, P.S. Akaltara, Distt. Janjgir Champa, Chhattisgarh.
4. Alok Singh S/o Late Shri Keshav Singh, aged about 42 years, R/o Akaltara, P.S. Akaltara, Distt. Janjgir Champa, Chhattisgarh.

---- Respondents

For Petitioner	:	Smt. Indira Tripathi, Advocate.
For R-1/State	:	Mr. Bhaskar Payashi, Panel Lawyer
For Respondent no.2	:	Mr. Sushobhit Singh, Advocate
For Respondents 3 & 4	:	Mr. Sunil Sahu, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

01/12/2016

The present petition under Section 482 CrPc has been filed seeking for quashment of the FIR dated 24.03.2015 filed at Police Station Akaltara, District Janjgir-Champa and the subsequent proceedings whereby a case has been registered against the appellant for having committed the offence under Sections 420 and 120B/34 of IPC.

2. The case in brief is that respondent no.2 who is the complainant lodged an FIR alleging that he had entered into an agreement with respondent No.3 for sale of 3.77 acres land situated at Khasra No. 2153/1 which originally belonged to respondent no.3. The agreement of sale was

executed on 13.08.2012 between respondent no.2 and respondent no.3. However, without completing the transaction as has been executed between respondent no.2 and respondent no.3 on 13.08.2012, it is alleged that the respondent no.3 the land owner of the disputed property executed a power of attorney on 25.03.2013 in favour of respondent no.4. On the basis of the said power of attorney, a sale deed was executed on 28.03.2013 and the said disputed property was sold to the present petitioner by the attorney holder respondent no.4 on behalf of respondent no.3 the actual owner of the property.

3. It is said that when the respondent no.2 complainant came to know about the said illegal transaction, he immediately filed a civil suit i.e. Civil Suit No. 26A of 2015 against the petitioner as well as respondents 3 & 4. The trial Court i.e. the 1st Additional Sessions Judge, Janjgir, District Janjgir-Champa vide its order dated 04.01.2016 allowed the suit granting a decree in favour of the respondent No.2 complainant.

4. The said judgment and decree has been questioned before this Court in FA No. 33/2014 jointly by respondents 3 & 4 as well as the petitioner. Pending the Civil Suit before the Court below the complainant also filed a complaint dated 23.04.2013 before the Police Authorities alleging an act of cheating on the part of the petitioner as well as respondents 3 & 4 in the process of selling the property illegally which was otherwise agreed to be sold to him. Based upon the said complaint, the Police Authorities lodged the FIR vide Crime No. 86/2015 registered at Police Station Akaltara, District Janjgir-Champa for the offence under Sections 420 and 120B/34 of IPC.

5. It is this FIR which has been sought to be quashed by the petitioner through the present petition.

6. Counsel for the petitioner taking the Court through the nature of complaint and the alleged transaction that underwent without disputing in those facts submits that the petitioner in the present case has been wrongly

implicated and he is not an accused in the alleged transaction whatsoever. According to the counsel for the petitioner, it is a case where the petitioner in fact is a bona fide purchaser without even being aware of any of the deal that has transpired between respondent no.2 and respondents 3 & 4. She submits that if the entire contents of the case diary on its face value are accepted as it is even then the ingredients as required for constituting an offence of cheating under Section 420 IPC are missing. She submits that the complaint or for that matter the complainant has not been able to show as to what is the conspiracy that has been played by the petitioner so as to bring home the offence under Section 120B/34 of IPC against the petitioner. Counsel for the petitioner contended that the entire factual matrix and the entire nature of dispute which exists between the parties is purely civil in nature and for which respondent no.2 complainant has already availed the remedy available to him and has got a judgment and decree in his favour. According to the counsel for the petitioner, since the ingredients required for cheating and conspiracy are not in existence and the petitioner admittedly being a bonafide purchaser, no offence could have been registered by the Police Authorities and therefore, the FIR deserves to be quashed on this ground alone. Counsel for the petitioner also submits that it is a case where the petitioner is a bona fide purchaser and whatever allegation and misdeed are alleged by respondent no.2 complainant, the same are attributed against the respondents 3 & 4. Therefore, the petitioner seems to have been unnecessarily implicated in the FIR. Hence, prayed for quashing of the FIR so far as the present petitioner is concerned.

In support of her contention counsel for the petitioner placed her reliance in (1998) 5 SCC 694 (Nageshwar Prasad Singh alias Sinha Vs. Narayan Singh and another, (2005) 13 SCC 699 (Murarilal Gupta Vs. Gopi Singh), (2006) 6 SCC 736 (Indian Oil Corpn. Vs. NEPC India Ltd. and others

and 2009 (3) CCSC 1312 (SC) (Md. Ibrahim and others Vs. State of Bihar and another and

7. Counsel appearing for respondent no.2 complainant opposing the petition submits that it is only an FIR which has been lodged at this juncture against the petitioner in the given factual matrix of the case. According to the respondent no.2, the present petition is too mature seeking for quashment of the FIR as there is sufficient material brought before the Police Authorities against the petitioner so as to take cognizance and register the FIR. Counsel for the respondent no.2 submits that whatever objection the petitioner intends to take in this petition, he can put forth the same before the Court below at the time of framing of charge. According to him, whether the offence is made out or not is a fact which can be determined only after recording of the evidence and for the purpose of registering of an FIR all that which has to be brought before the Police Authorities is a strong complaint relating to a cognizable offence to have been committed. According to respondent no.2, it is a clear case where the petitioner in connivance with respondents 3 & 4 have conspired and cheated the respondent no.2 and a property which was agreed to be sold to respondent no.2 by playing fraud the said property has been got sold to the petitioner. According to him, it is a case where the alleged sale deed which is said to have been executed between the respondent no.3 and the petitioner is a sham arrangement made with a mala fide intention of defrauding the respondent no.2 complainant. Hence, prayed for rejection of the present petition.

8. Having considered the rival contentions put forth by the counsel appearing on either side and on perusal of the records what clearly reflects is the fact that respondent No.2/complainant undisputedly has availed the civil remedy that was available to him for quashment of the sale deed executed between respondent no.3 and the petitioner through the respondent no.4 and the respondent no.2 complainant has also been successful in the said civil

suit in as much as a decree has been passed in his favour nullifying the sale deed executed between the petitioner and the respondent no.3. So far as the complaint which has been made by respondent no.2 before the Police Authorities is concerned, from the record it reflects that the petitioner was well aware of the transactions that has transpired between respondent no.3 and respondent no.2 of entering into an agreement for sale and knowingly the petitioner and the respondents 3 and 4 have got a sale deed executed denying the rightful claim of the complainant over the said property. What has also been brought to the notice of the Court below is the ignorance on the part of the petitioner in the course of his cross examination in the civil suit as to how the present petitioner made payment of the sale consideration in respect of the purchase of suit property. The petitioner was not aware of as to whether he had paid by cash or by cheque to the respondent no.3 while purchasing the said property. It is hard to believe that a bona fide purchaser does not even remember under what mode he had made the payment for the property that he has allegedly purchased. Further, it is a case where the petitioner and the complainant are relatives and they were aware of the agreement to sell which has been entered into between the complainant and the respondent no.3.

9. For the foregoing reasons, prima facie this court is of the opinion that from the nature of complaint that has been lodged against the petitioner and the respondents 3 & 4 there appears to be some material available which has prompted the Police Authorities to register the case vide Crime No. 86 of 2015. Now, whether the allegation or the complaint lodged has substance or not is a matter of fact which only after completion of investigation can be said as to whether any offence in fact is made out or not or whether the nature of dispute is civil nature or it requires any trial or not. Further, this Court cannot brush aside the fact that after filing of the charge sheet, a stage would come where charges would be framed and the grievance of the petitioner which

has been raised in the present case for quashment of the FIR can still be raised at the time of framing of charge.

10. In the factual matrix of the case this Court, at this stage, does not find it proper for interfering with the registration of the FIR. So far as the judgments which has been relied upon by the counsel for the petitioner is concerned, the same are distinguishable on the facts of each of the cases. A plain reading of the facts of each of the cases by itself clearly establish that the ratio laid down by the Supreme Court in those cases were under entirely different factual matrix of the case when compared to the facts of the case in hand.

11. Thus, the present Cr.M.P. being devoid of merit deserves to be and is accordingly dismissed.

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

Bhola