

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 860 of 2016**

1. Shri Basant Bagrecha S/o Shri Pannalal Bagrecha Aged About 47 Years R/o Avenue 144, D 202, Amlidih, Tehsil & Civil & Revenue District Raipur, Chhattisgarh.
2. Shri Avinash Shukla S/o Late Shri Indra Bhushan Shukla Aged About 50 Years R/o H-5, Sai Vatika, Deopuri, Tehsil & Civil & Revenue District Raipur, Chhattisgarh.

---- Petitioners**Versus**

1. State of Chhattisgarh Through Secretary, Department Of Home, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
2. Superintendent Of Police, Raipur, Chhattisgarh.
3. Station In Charge, Police Station Golbazar, Tehsil & District Raipur, Chhattisgarh.
4. Kripashankar Pandey Alias Dr. Sanjay Pandey S/o Shri Madan Gopal Aged About 45 Years R/o C 313, Shailendra Nagar, Tehsil & District Raipur, Chhattisgarh.
5. Shri Vijendra Bhatnagar S/o Late Shri Ramsharan Bhatnagar Aged About 44 Years R/o H.No. 38, Hanuman Nagar, Kalibadi, Raipur, Chhattisgarh.

---- Respondents

For Petitioners	:	Shri Prasoon Agrawal, Advocate.
For Respondent/State	:	Shri Bhaskar Pyasi, Panel Lawyer.
For Respondent No.4	:	Shri Raghvendra Pradhan, Advocate.
For Respondent No.5	:	Ms. Sareena Khan, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****21/10/2016**

1. By way of present petition under Section 482 of CrPC, the petitioners are assailing the order of the JMFC, Raipur, dated 17.12.2015 whereby on an application under Section 156(3) of CrPC, the court below has ordered for registration of FIR against the petitioners for the offence under Sections 120-B, 420, 467, 468 and 471 of IPC.

2. The facts of the case in nutshell are that, the respondent No.4, who is complainant in the case before the JMFC, Raipur, filed an application under Section 156(3) CrPC against the respondent No.5 as well as the present petitioners. It is alleged by the complainant that the present petitioners in connivance with the respondent No.5 is said to have allured and on false pretext forced him to sale his property to the respondent No.5. Further, in the same way, without making the entire payment of the property as agreed by the parties, got the sale deed also registered and the respondent No.5 also tried to get the property mutated in his name by playing fraud with certain documents. However, the respondent No.4 filed an objection in the mutation proceeding which ultimately got rejected. Meanwhile, a cheque was also issued by the respondent No.5 to the respondent No.4 which on presentation got dishonored on account of insufficiency of funds. The matter was reported with the concerned Superintendent of Police and when no action was taken by the police authorities an application under Section 156(3) CrPC was filed by the respondent No.4 before the JMFC, Raipur.
3. The court below after the preliminary inquiry and on being satisfied in respect of prima facie offence made out, directed the police to register an FIR against the respondent No.5 as well as the petitioners and to investigate the matter and to proceed further. It is this order of registration of FIR which has been assailed by the petitioners.
4. The sole contention of the petitioners while assailing the order of registration of FIR is that, on perusal of the complaint would reveal that there is no role played by the petitioners in the alleged transaction that

has been entered into between the respondents No.4 & 5. According to petitioners, the only act which can be attributed against them is that of introducing the respondent No.4 to the respondent No.5 and the said act of introduction of the petitioners cannot be brought within the act of criminal offence by any stretch of imagination and thus, the order of registration of FIR dated 17.12.2015 deserves to be quashed/set aside.

5. According to petitioners, all that they have done is that they knew the respondent No.4 and the respondent No.5 and when the respondent No.4 has shown his interest of selling his property, the petitioners have introduced him to the respondent No.5 i.e. the two persons who are interested in the sale and purchase of property. Except for this, there is no role to have been played by the petitioners, yet they have been falsely implicated. According to them, even if the contentions of the complaint case is taken note of, then also it would clearly reflect that the allegation against the petitioners also is that of having acted only as a person who has introduced the purchaser to the seller and nothing more. This act on the part of the petitioners even if it is presumed to have been acted upon, does not have any of the ingredients which are otherwise required for the constitution of an offence under Sections 120-B, 420, 467, 468 and 471 IPC.
6. Counsel for the respondents, however, opposes the petition and submits that at the time of registration of the complaint, it is only the prima facie case which has to be seen by the court below and that the contents of the complaint would clearly reflect that the petitioners also did have a role to play in the alleged transaction that was entered into between the

respondent No.4 and respondent No.5. According to the respondents, whether the act whatever it is on the part of the petitioners was with any malafide intention or not, is a matter of evidence which cannot be looked into at this stage nor can the non-existence of the role played by the petitioners be taken into consideration by the court below. Reference to take cognizance at the stage of registration of the complaint itself would have to be thrashed out by leading cogent and strong evidence. Thus, prayed for the rejection of the petition.

7. After hearing the submissions put forth by the counsel on either side, it would be trite at this juncture to refer to the contents of the complaint (Annexure A/2). Paragraph 7 of the complaint clearly reflects the role played by each of the accused persons. In the complaint itself, the complainant has clearly mentioned about the respective act played by the petitioners. A plain reading of the complaint itself would reveal that it is not a case where the act alleged against the petitioners was that of simple introducing respondent No.4 to respondent No.5. It is also alleged in the complaint that the petitioners and the respondent No.5 are all involved in real estate business and that there are previous instances of their earlier also being involved in such cheating and fraud in the past. Further, if we look into the statement of the complainant recorded at the time of registration of the complaint before the court, there also the complainant has reiterated the same facts that has been reflected in the complaint alleging the specific role to have been played by the petitioners. Thus, it cannot be said to be a case of no material or allegation against the petitioners.

8. Further, whatever contentions the petitioners have brought in this petition are facts which can be brought to the notice of the court below at the time of framing of charge also. At the stage of registration of a complaint case, all that the court has to see is whether in the nature of complaint which has been made and in the preliminary stage of registration of complaint, prima facie there is avements against the accused persons or not and whether the averment do make out an offence or not which in the opinion of this court, in the present case, the complainant has been able to establish and the court below has rightly ordered for registration of FIR.
9. Now as far as whether act is made out or whether the ingredients for making out an offence under Sections 120-B, 420, 467, 468 and 471 IPC is there or not, would be considered by the court below at the time of framing of charge. Thus, this court does not find any prima facie strong case made out by the petitioners calling for an interference with the orders impugned.
10. In the instant case all that the petitioners contention is that they have not played any role in the alleged transaction between the respondents No.4 & 5. This contention of the petitioners itself is a matter of evidence. Furthermore, this contention of the petitioners can also be looked into by the trial court at the time of framing of charge. At this juncture whether on the basis of averments made in the complaint and the statement of the complainant and the other witnesses, it cannot be said to be a case where the court below has committed any error on facts or on law while ordering for registration of the complaint case and to investigate the

matter.

11. The contentions put forth by the petitioners can also be looked into by the police authorities during the course of investigation and if the averment made by the petitioners are to be believed, then the police authorities can also file a suitable report in this regard.
12. Thus, for the foregoing reasons, this court is of the opinion that no strong case has been made out calling for an interference in the order passed by the court below and the petition deserves to be and is hereby dismissed. No order as to costs.

Sd/-
(P.Sam Koshy)
Judge

inder