

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1078 of 2016

1. Bhagwat Prasad Gupta S/o Late Jagannath Gupta, Aged About 75 Years, R/o Arjunda, Police Station- Arjunda, District- Balod, Chhattisgarh.
2. Dipesh Kumar Jain S/o Anil Jain Aged About 32 Years, R/o Village- Arjunda, District- Durg, Chhattisgarh, At Present R/o Rishabh Nagar, Durg, District- Durg, Chhattisgarh.

---- Petitioners

Versus

1. State of Chhattisgarh, Through The Station House Officer, Police Station- City Kotwali, Durg, District- Durg, Chhattisgarh.
2. Harjinder Singh, S/o Ravel Singh, Aged About 52 Years, R/o Nagpur Naka, Behind Kakkad Auto, Rajnandgaon, Police Station-City Kotwali, Rajnandgaon, District Rajnandgaon, Chhattisgarh.

---- Respondents

For Petitioners	:	Shri Goutam Khetrapal, Advocate
For Respondent/State	:	Shri Ramakant Mishra, Dy. Advocate General

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

17/03/2017

1. Heard on admission.
2. This petition has been filed by the petitioners for quashing criminal proceedings pending in the Court of Judicial Magistrate First Class, Durg, in Complaint Case No.25841/2013 (***Harjinder 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 petitioners herein.
3. Learned counsel for the petitioners argued that institution of criminal proceedings against the petitioners is a serious matter and unless there are

clinging and cogent material to make out a prima facie case, the petitioners could not be subjected to agony and hazard of criminal proceedings. Contention of learned counsel for the petitioners 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 petitioners themselves derived any benefit out of the sale transaction. The land was purchased by the other accused. There is no material to show that the petitioners were paid any amount out of the total amount of sale consideration. Further submission of learned counsel for the petitioners is that the petitioners were 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 petitioners are 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 petitioners were attesting witnesses 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 petitioners 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-Jafar Rashid Khan and Sunil Barmecha. 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 petitioners were attesting witnesses. 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 Jafar Rashid Khan and Sunil Barmecha. 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

petitioners are the attesting witnesses to the whole transaction. They appeared as witnesses of the transaction, in which, some lady allegedly, co-accused Jasvinder Kaur, impersonated herself as Manjeet Kaur and 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 petitioners before this Court, are ordinarily a matter of enquiry during trial where the petitioners would be at liberty to raise defence, which are available to him under the law. At this stage, it cannot be said that the petitioners 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 petitioners 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 be allowed to be converted into an appeal even before trial of a case where prosecution and defence are yet to lead their respective 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 petitioners.

8. In the result, the petition is dismissed.

Sd/-

(Manindra Mohan Shrivastava)

Judge