

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 144 of 2017

Order Reserved On : 02/02/2017

Order Passed On : 03/05/2017

- Rajan Kumar Gupta S/o Shri Nand Prasad Gupta, Aged About 46 Years
R/o Dayalbandh, Bilaspur District Bilaspur, Chhattisgarh.

---- Petitioner

Versus

- Gurjeet Kaur Bajwa W/o Shri Rajendra Singh, Aged About 57 Years
R/o B -4, Minocha Colony, Police Station Civil Lines, Bilaspur District
Bilaspur (Chhattisgarh).

---- Respondent

For Petitioner : Shri Abhishek Sinha, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

1. The petitioner has invoked inherent powers of this Court by preferring this petition under Section 482 CrPC for quashing the order dated 7.1.2017 passed by the Sessions Judge, Bilaspur in Criminal Revision No.67/2016, as also for quashing the order passed by the Judicial Magistrate First Class, Bilaspur on 25.1.2016 in complaint case No.866/2016 registering the offence under Section 420 read with Section 120-B of the IPC against the petitioner and other accused persons named in the complaint.

2. Facts of the case, briefly stated, are that complainant Gurjeet Kaur is the owner of residential house at Minocha Colony, Bilaspur. In the complaint filed before the Magistrate under Section 200 CrPC, she would allege that the petitioner and other accused persons conspired to forge and concoct an agreement to sell of the complainant's house in favour of one Amolak Singh. The petitioner purchased stamp of the draft sale deed and signed over the same as attesting witness knowing fully well that the owner of the house is not present during the process. The trial Court, after recording statement of the complainant and her witnesses, issued the process against the petitioner for offence under Section 420 read with Section 120-B of the IPC.
3. It is not in dispute that based on the forged agreement of sale, Amolak Singh preferred a suit against the complainant which was dismissed by the Civil Court holding the agreement to be forged and the appeal preferred by Amolak Singh against the said judgment and decree has also been dismissed.
4. Referring to the judgments in the matters of **Mohammed Ibrahim and Others Vs. State of Bihar and Another**¹, **Vijaya Rao Vs. State of Rajasthan and Another**², **Kunstocom Electronics (I) Pvt. Ltd. Vs. Gilt Pack Ltd. And Another**³ and **S.W. Palanitkar and Others Vs. State of Bihar and Another**⁴ it is argued that the property being still at the hands of the complainant, offence of cheating is not complete,

1 (2009) 8 SCC 751

2 (2005) 7 SCC 69

3 (2002) 2 SCC 383

4 (2002) 1 SCC 241

therefore, the Magistrate has wrongly issued the process.

5. In **Mohammed Ibrahim** (Supra), the Supreme Court has considered as to when a forged document is made, as defined under Section 464 of the IPC. It is held thus in para-14:-

“14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:-

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a 'false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

The Supreme Court thereafter held thus in para-18 & 21:-

18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows:

(i) deception of a person either by making a false or

misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.”

6. In the case at hand, admittedly, there is finding by the Civil Court that the agreement to sell presented by Amolak Singh against the complainant by filing a suit for specific performance was a forged agreement which was never signed by the complainant, therefore, element of fraudulent act or deception is available.
7. Present is not a case where the complainant has converted the case of civil nature into a criminal case.
8. With regard to the High Court's power to quash a complaint or charge

sheet at the initial stage has been considered by the Supreme Court in a catena of decisions.

9. In **Padal Venkata Rama Reddy alias Ramu Vs. Kovvuri Satyanarayana Reddy and others**⁵, it has been held that quashing of criminal proceedings under Article 226 of the Constitution or under Section 482 CrPC is permissible only if the complaint does not disclose any offence or the same is frivolous, vexatious or oppressive. It is held that the High Court cannot get into meticulous analysis of facts as to likelihood of acquittal or conviction.

10. In **C.P. Subhash Vs. Inspector of Police, Chennai and others**⁶, it has been held that the High Court in ordinary course should not invoke its powers to quash such proceedings except in rare and compelling circumstances.

11. In the matter of **N. Soundaram Vs. P.K. Pounraj and Another**⁷, the Supreme Court has held that charge sheet can be quashed only when the prosecution fails to establish any case against the accused even if the entire prosecution is taken to be true. In the said matter, the following has been held in paragraph-13:-

“13. It is well settled by this Court in a catena of cases that the power under Section 482 CrPC has to be exercised sparingly and cautiously to prevent the abuse of process of any court and to secure the ends of justice. [See **State of Haryana v. Bhajan Lal**, 1992 Supp (1) SCC 335] The inherent power should not be exercised to stifle a

5 (2011) 12 Supreme Court Cases 437

6 (2013) 11 Supreme Court Cases 559

7 (2014) 10 SCC 616

legitimate prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegations and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482 CrPC. [See *MCD v. Ram Kishan Rohtagi*; (1983) 1 SCC 1] An investigation should not be shut out at the threshold if the allegations have some substance. [See *Vinod Raghuvanshi v. Ajay Arora*; (2013) 10 SCC 581]”

12. The said principle has been reiterated in the matter of **Homi Rajvansh Vs. State of Maharashtra and Others**⁸.

13. In view of the above settled legal position, this Court is of the considered opinion that present is not a fit case for interference.

14. The present Petition being bereft of any substance deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve