

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 497 of 2018

- Ram Bihari Agrawal S/o Late Jeevan Lal Agrawal Aged About 72 Years R/o Village Hathband, Police Station And Tahsil Simga, Civil And Revenue District Baloda Bazar Bhatapara Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Home Department, Mahanadi Bhawan New Mantralaya, Raipur Police Station Kewli, Tahsil Civil And Revenue District Raipur Chhattisgarh
2. District Magistrate Baloda Bazar -Bhatapra, Police Station, Tahsil Civil And Revenue District Baloda Bazar Bhatapara Chhattisgarh
3. Deepak Agrawal S/o Late Shri Kunj Bihari Agrawal Aged About 48 Years R/o House No. 334, Sector-3, Shaktinagar, Bhopal, Tahsil And District Bhopa M. P. Through Power Off Attorney Holder- Ratnesh Kumar Agrawal Aged About 44 Years S/o Shri Ramkrishna Agrawal R/o Behind Kankali Temple Kankalipara, Raipur Police Station Purani Basti Tahsil, Civil And Revenue District Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Shri Ratnesh Agrawal, Advocate
For State	:	Shri Manish Nigam, Panel Lawyer
For Respondent No.3	:	Shri Varun Sharma, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

13/09/2018

This petition, under Section 482 of CrPC, is directed against order dated 13/02/2018 by which, the revision against order taking cognizance for offences under Section 419, 420, 467, 468, 471 of IPC has been dismissed.

2. A complaint was filed by Deepak Agrawal before the Magistrate alleging that at the instance of the petitioner, mutation proceedings were initiated in which both the petitioner and his brother Kunj Bihari are said to be applicants whereas on that date, Kunj Bihari was not alive and in the proceedings, impersonating Kunj Bihari, his statement in his name were recorded and order of mutation of the entire property in the name of present petitioner was passed. The Magistrate, after recording preliminary

statement of complainant's witness, took cognizance of the offences against the petitioner. Aggrieved by the said order, revision was filed which was also dismissed.

3. Argument of learned counsel for the petitioner is that the allegation against the petitioner is not *prima facie* made out because the proceedings said to have been drawn by the Revenue Officer at the instance of the petitioner and his brother - Kunj Bihari bearing signature of the present petitioner. He would further submit that later on, the Tahsildar had withdrawn the orders and nullified all the proceedings.

4. After going through the contents of the complaint, preliminary statement and the order passed by the Magistrate, it is found that the revenue proceedings for mutation was registered before the Tahsildar in which, the order sheet records that Kunj Bihari appeared and his statement is also said to have been recorded. These proceedings were initiated on the application said to be filed by Kunj Bihari and Ram Bihari. Kunj Bihari, on the date of institution of the application, was not alive. The petitioner herein appears to be the beneficiary of the entire proceedings as the order of mutation of the entire property in the name of present petitioner was passed. In the opinion of this Court, that much material is sufficient to take cognizance of the offence as *prima facie* case is made out.

5. The arguments set forth are in nature of defence set up by the petitioner which cannot be taken into consideration. A *prima facie* case is required to be made out. Whatever defence are taken before this Court may be taken by the petitioner during the course of trial. I do not find any reason to interfere with the order of the Court below. The petition is dismissed.

6. Before parting with the case, it is to be observed that the observations which have been made are only limited for finding whether *prima facie* case is made out for taking cognizance and it should not be treated as finding on the allegations made in the complaint. The Magistrate shall decide the complaint on the basis of material before it without being influenced by the observations made by this Court.

Sd/-
(Manindra Mohan Shrivastava)
Judge