

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1899 of 2018

1. Pawan Kumar Modi S/o Late Puranmal Modi Aged About 61 Years R/o Village Naya Baradwar, Police Station And Tashil Baradwar, District Janjgir Champa Chhattisgarh
2. Anand Kumar Modi S/o Pawan Kumar Modi Aged About 32 Years R/o Village Naya Baradwar, Police Station And Tashil Baradwar, District Janjgir Champa Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh Acting Through Officer-In-Charge, Sakti, District Janjgir Champa Chhattisgarh
2. Gyarsilal S/o Late Satya Narayan Aged About 65 Years R/o Champa, District Janjgir Champa Chhattisgarh

---- Respondents

For Petitioners	:	Shri K.A.Ansari, Senior Advocate with Shri R.L.Bajpai, Advocate
For State	:	Shri Ashish Shukla, Dy.A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

14/09/2018

Heard on admission.

This petition has been filed by the petitioner seeking quashment of FIR lodged at the instance of the complainant – Gyarsilal on which, the police has registered offence under Section 420 / 34 of IPC.

2. Gyarsilal / respondent lodged a report in the police-station alleging that the petitioner No.1 executed a sale deed in favour of his son i.e. petitioner No.2 on the strength of power of attorney jointly executed by four persons namely Chautmal, Mithulal, Gyarsilal and Bhagwati Devi whereas on the date of execution of sale deed, Bhagwati Devi was not alive, she having died seven years before. According to the report, this was done in order to cheat Gyarsilal in respect of the property he claims to have interest.

3. Learned senior counsel argued that the parties are members of one family and there was no *mens rea* on the part of petitioner No.1 to deprive Gyarsilal of any interest in the property in respect of which, Gyarsilal along with Chautmal, Mithulal and Bhagwati Devi had executed joint power of attorney in favour of petitioner No.1. He submits that this is a case of bonafide claim over the title of the property by petitioner No.1 on the basis of an agreement entered into between Chautmal, Mithulal, Gyarsilal and Bhagwati Devi with Puranmal – father of petitioner No.1.

4. The allegations against the petitioner rests on the fact that there exists a property in respect of which, general power of attorney was executed in favour of petitioner No.1 along with four persons including Bhagwati Devi when Bhagwati was alive. *Prima facie*, therefore, petitioner No.1 admitted the title and interest of Bhagwati in respect of the property, for which he was granted power of attorney by four persons. He, then, executed a sale deed long after death of Bhagwati Devi by placing before the Registrar, joint power of attorney executed in his favour by four persons including Bhagwati without informing the authority that in so far as Bhagwati is concerned, the power of attorney stood revoked upon her death.

5. Irrespective of the claims, the act of the petitioner in using the power of attorney for sale of the property where one of the power of attorney holder was not alive without disclosing this fact, can be said to be make out a *prima facie* case and it cannot be said that the FIR does not disclose any case on its face value. Therefore, in the opinion of this Court, FIR cannot be quashed at this stage.

6. The petition is, therefore, dismissed. Before parting with the case, it has to be clarified that whatever observations have been made are only confined to the aspect whether *prima facie* case is made out and should not be used as an adverse observation on the criminality aspect during trial and the Trial Court shall decide the matter without being influenced by the observation of this Court.

Sd/-
(Manindra Mohan Shrivastava)
Judge