

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 15.02.2018

Order Delivered on : 14/03/2018

CR.M.P. No. 1439 of 2017

Shiv Kumar alias Jawahar Saraf, S/o. Motilal Saraf, Aged About 53 Years, R/o. Behind Motilal Petrol Pump, Link Road, Police Station - Tarbahar, Bilaspur, Chhattisgarh.

---- Petitioner

Versus

1. The State of Chhattisgarh, Through : The Station House Officer, Police Station, Civil Lines, Bilaspur Chhattisgarh.
2. Ramavtar Agrawal, S/o. Shri Jagmohan Das Agrawal, Aged About 52 Years, R/o. Agrawal Bhawan, Vidyanagar, Police Station -Tarbahar, Bilaspur Chhattisgarh.

-----Respondents

For Petitioner	: Mr. Manish Datt, Sr. Advocate with Mr. Maneesh Sharma & Mr. Suyash Dhar, Advocates
For Respondent No.1/State	: Mr. Anupam Dubey, Dy. Govt. Advocate
For Respondent No.2	: Mr. Chetan Sharma, Sr. Advocate with Mr. Ankit Singhal, Advocates

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

14/03/2018

1. This petition under Section 482 of Cr.P.C. has been brought with prayer to quash the charge-sheet filed against the petitioner for his

prosecution under Section 420, 120-B/34 of the Indian Penal Code, pending before the Court of Chief Judicial Magistrate, Bilaspur, District – Bilaspur (C.G.).

2. The petitioner in this case is a land broker. It is submitted that respondent No.2/complainant in this case has alleged that the petitioner willfully and deliberately provided him with incorrect information that the land in question, whose registered owner was co-accused - Shrirang Bobde was clear in all respect for the intended purchase and on the basis of the information supplied by this applicant, the complainant made the purchase of said land, which was subsequently found to be a Waqf Property and the seller co-accused named Shrirang Bobde had no authority to transfer the said land. It is submitted that the case has not been properly investigated by the police and no case is made out against the petitioner, on the basis of the material present in the charge-sheet, as this petitioner has simply received the brokerage and was not a party to the said sale. All the dispute is related to only one land bearing Kh.No.199/2 and according to this petitioner, it is neither a government land nor a Waqf land, as the original owner of the said land was one Rafique Ahmad, from whom, the land was purchased by the co-accused Shrirang Bobde and the land was recorded in the name of Shrirang Bobde at the time, when the sale was made. Copy of the Records of Rights is submitted along with the petition, shows Kh. No.199 was recorded in the name of Rafique Ahmad and it was from the same khasra number, the transfer was made by the Rafique Ahmad vide registered sale deed dated 08.03.1990 in

favour of Shrirang Bobde, which clearly shows that the transferred land was a piece of Kh.No.199, which was subsequently renumbered as Kh.No.199/2 and it was the same land that has been transferred by Shrirang Bobde to the respondent No.2 by registered sale deed dated 26.02.2007. Subsequent to that, mutation was also done in favour of the co-accused Shrirang Bobde and his name was entered in the records of rights without there being any objection and the report given by the Patwari of the concerned circle was also in his favour. It is submitted that after the purchase made by the respondent No.2, the land stands recorded in the revenue records in the name of respondent No.2 and further it is the respondent No.2, who is still in possession of the land and there is no dispute regarding title of the respondent No.2 so far.

3. It is also submitted, that the copy of the report dated 12.09.2016 submitted by the Patwari to Tahsildar – Bilha mentions that earlier the land of Kh.No.199 in the year 1954-55 was recorded as Forest land and Ghas land. But subsequent to that by order of Sub-Divisional Officer, Revenue, Bilaspur in Revenue Case No.46-A/1962-63 order dated 28.11.1962, it was recorded in the name of Rafique Ahmad, S/o. Hazi Masood Khan and this report also mentions that subsequent to that by gazette notification of M.P. Government dated 25.08.1989, the same land was recorded as Waqf Property. When the parties came to know about this that the land was recorded as Waqf Property, an agreement was entered between the petitioner and the respondent No.2 on 21.10.2014, making this statement, that land in question has been erroneously

declared as Waqf Property, regarding which, claim has been preferred before the Waqf Tribunal, Raipur. According to this agreement, the petitioner took the responsibilities to clear the dispute and agreed to this conditions in case of failure to do so, he shall pay consideration amount Rs.7,80,00,000/- to the respondent No.2 and he also issued a cheque in security of the said agreement. It is submitted that the said cheque has been presented for payment by the respondent, which was dishonored and because of that petitioner is facing trial under the provisions of Negotiable Instrument Act.

4. The recorded owner – Rafique Ahmad filed miscellaneous civil suit before the Chhattisgarh State Waqf Tribunal, Raipur challenging the declaration of the property as Waqf and the same has been decided on 28.11.2015 in favour of Rafique Ahmad giving declaration that the land in question was the property of plaintiff- Rafique Ahmad and his ancestors, hence on this basis, first seller of the land Rafique Ahmad had passed absolute title in favour of co-accused Shrirang Bobde and Shrirang Bobde has further passed the title in favour of respondent No.2. Hence, there is no question of any fraud in this case. It is submitted that a process of land acquisition was started by the Ministry of Road Transport and Highways for which the publication of notification dated 01.09.2017 was made, in which, it is clearly shows that Kh.No.199/2 is a private land.
5. It is further submitted that although, the petition under Section 482 of Cr.P.C. filed by the co-accused Shrirang Bobde as Cr.M.P.

1033/2016 has been dismissed vide order dated 24.10.2016, the same has no effect in this petition, because the principle of *res-judicata* is not applicable in the instant case. Reliance has been placed on the judgment of ***Devendra and Ors. Vs. State of U.P. & another***, reported in **(2009) 7 SCC 495**, in which it was held very clearly by the Supreme Court that principle of *res-judicata* has no application in criminal proceedings. Similar view was taken by the Supreme Court in case of ***Vijayender Kumar & Ors. Vs. State of Rajasthan & another***, reported in **(2014) 3 SCC 389** that a second petition under Section 482 of Cr.P.C. is maintainable.

6. It is also submitted that there is no record to show that the land in question belongs to Waqf Board. Respondent No.2 has ample opportunity to make enquiry about the credibility of the title of the land and the sale deed in his favour itself shows that registration of sale deed was done in 2007, hence, there is no such circumstance to make out, that the act of deceit had taken place in the year 2005 or in the year 2007. The petitioner was under belief that the land in question had good title in favour of the seller, the co-accused Shrirang Bobde. Hence, it is a fit case for quashment of the criminal proceedings against this petitioner, as there is no iota of evidence regarding any inducement given with intent to defraud the respondent No.2 by the petitioner. Further this petitioner was not a recipient of the consideration of the said sale transaction. Hence, the prosecution against him is totally misconceived. It is prayed that petition be allowed and the criminal proceedings against the petitioner be quashed.

7. Reliance has been place in case of ***M/s. Indian Oil Corporation Vs. M/s. Npc India Ltd. & Ors.*** reported in ***(2006) 6 SCC 736*** and in case of ***Veer Prakash Sharma Vs. Anil Kumar Agrawal & another*** reported in ***(2007) 7 SCC 373***, according to which, mere breach of contract is not a ground for criminal prosecution.
8. Counsel for the respondent No.1/State, opposing the submission made on behalf of the petitioner submits that it was well within the knowledge of the petitioner that vide gazette notification dated 25.08.1989, the land in question was declared as Waqf Property and it was deliberate act on the part of the petitioner to supply that incorrect information to the respondent No.2, which can be regarded as malafide intention. A complaint was made by respondent No.2 on 08.06.2015 in Police Station Civil Lines, Bilaspur, which was enquired in detail by Senior Police Officer and on finding material against the petitioner, the FIR was registered against the accused persons. It is further submitted that the status of the land in question being a Waqf Property or not, is still pending as the State has challenged the judgment passed by the Waqf Tribunal, Raipur before this High Court and this has been mentioned in the order passed by this Coordinate Bench of this Court in Cr.M.P.No.1033/2016, that entire issue involved in the present case revolves around the judgment passed by the Waqf Tribunal, which is already under challenge in a different proceeding, where stay has already been granted by this Court. Hence, at this stage, it can not be said that the title on the land in question is clear in favour of the respondent No.2 and that clear title was passed by Shrirang Bobde

in favour of the respondent No.2. It is also submitted that as the petition for quashment of proceeding against respondent co-accused Shrirang Bobde has been dismissed by the Coordinate Bench of this Court, hence, this petition also is not maintainable. Hence, prayed that petition be dismissed.

9. Learned counsel for respondent No.2 -Ramavtar Agrawal, submits that respondent No.2 has raised preliminary objections to the present petition stating that the same is not maintainable as it has been filed in disregard to the settled principles of law and is also abuse of process of Court. The petitioner has not approached this Court with clean hands. The petitioner had approached the Court of Judicial Magistrate First Class, by filing an application under Section 156(3) of the Cr.P.C. seeking lodging of FIR against respondent No.2, which was dismissed by the concerned Magistrate by order dated 7.7.2015. The application for anticipatory bail preferred by this petitioner has been rejected by this High Court. Subsequent to that, the petitioner had filed an application for grant of anticipatory bail before the Supreme Court, which has not been allowed. Hence, this petition under Section 482 of the Cr.P.C. has been filed to misuse the liberty of this Court for seeking interim relief in the case concerned. The charge-sheet has been filed against the petitioner showing him as absconder in the proceeding under Section 482 of the Cr.P.C. drawn against him. It is also submitted that the petition under Section 482 of the Cr.P.C. filed by the co-accused – Shrirang Bobde has been dismissed by the Co-ordinate Bench of this Court and consequent to that decision against the co-accused persons,

this petition is also liable to be dismissed. It is further submitted that the ground raised by the petitioner that the land in question is not Waqf Property is erroneous and misleading because the judgment given by the Waqf Tribunal has been challenged before this High Court and the matter is still pending in which stay order has been granted. Hence, the status of the land in question has not been finalized so far. The complaint by this respondent to City Superintendent of Police, Bilaspur discloses all the facts which constitute commission of offence by the petitioner which was been in-turn inquired by Senior Police Officer and it has been reported in affirmative that the crime has been committed. Hence, a *prima facie* case is made out.

10.The revenue report submitted by Patwari to Tehsildar dated 12.9.2016 also discloses that the land was recorded in the name of Waqf. In a report submitted by the Chief Executive Officer, Chhattisgarh State Board, Raipur dated 17.8.2015 (Annexure-R/3) it is mentioned that the property in question belonged to Waqf vide notification dated 25.8.1989 against which illegal entry was made in favour of Rafique Ahmad and the property was sold to co-accused Shrirang Bobde, who in-turn sold it to the complainant/ respondent No.2. Hence, unauthorized persons, by defalcation and forgery, have caused loss to the Waqf Board. It is submitted that the petitioner had knowledge that the property belonged to Waqf Board, hence, the role played by him in the said transaction cannot be held as *bona fide*. The provision under Section 482 of the Cr.P.C. cannot be used to review the order of the Criminal Court or the order of the

Co-ordinate Bench of High Court.

11.Civil Revision No. 122 of 2015 has been filed by Intjamiya Committee Jama Masjid Waqf Board regarding the land in question in which by order dated 11.12.2015 the Co-ordinate Bench of this Court is directed to maintain status quo as it exists and only because of the pendency of this matter before the High Court, the petition under Section 482 of the Cr.P.C. filed by the co-accused Shrirang Bobde has been dismissed in Cr.M.P. No. 1043 of 2016. Hence, this petition is without any substance which may be dismissed accordingly.

12.In reply, learned counsel for the petitioner submits that because the petition under Section 482 of the Cr.P.C. of the co-accused has been rejected by the High Court, this cannot be made a ground for not entertaining a similar petition of another co-accused person.

13.Reliance has been placed by counsel for the petitioner on the judgments of the Supreme Court in **Pepsi Food Limited and Another vs. Special Judicial Magistrate and Others** reported in **1998(5) SCC 749**, **Umesh Kumar vs. State of Andhra Pradesh** reported in **2013(10) SCC 591**, **Monica Kumar and Another vs. State of Uttar Pradesh and Others** reported in **2008(8) SCC 781**, **Ashok Chaturvedi and Others vs. Shitul H. Chanchani and Another** reported in **1998(7) SCC 698** and **Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Mohan Singh and Others** reported in **1975(3) SCC 706** and in the judgment of

Madhya Pradesh High Court in **Sushil Kumar Sharma vs. State of Madhya Pradesh** in **M.Cr.C. No. 4135 of 1992** with respect to view expressed by the Supreme Court regarding the scope of power of High Court in exercising jurisdiction under Section 482 of the Cr.P.C.,

14. Reliance has also been placed on the judgments of Madhya Pradesh High Court in the cases of **Ashok Kesharwani and another vs. State of Madhya Pradesh through CBI, Jabalpur** in **M.Cr.C. No. 10762 of 2006**, **Raj Gopal Mahajan and Another vs. Central Bureau of Investigation through Superintendent of Police, Jabalpur** in **M.Cr.C. No. 10203 of 2006**. The judgments of the Supreme Court in the cases of **Harmanpreet Singh Ahluwalia vs. State of Punjab** reported in **2009(7) SCC 712**, **Hiralal Hari Lal Bhagwati vs. CBI, New Delhi** reported in **2003(5) SCC 257** and **Devendra and Others vs. State of Uttar Pradesh and Another** reported in **2009(7) SCC 495** have been cited on the point that dishonest intention must exist at the time of making promise or representation.

15. The petitioner has further placed reliance on the judgments of Madhya Pradesh High Court in the cases of **Danish Hanishi vs. State of Madhya Pradesh** in **Criminal Revision No. 232 of 2013** and **Pawan Kumar Rawat vs. State of Madhya Pradesh** in **Criminal Revision No. 1124 of 2015** on the point that the statements given by the co-accused persons cannot be taken into account against the another co-accused person.

16.Learned counsel for the petitioner further submits that at the time of purchase/ sale the petitioner was not aware of the status of the land and the illegal information supplied by the vendor Rafique Ahmad. Learned counsel for the petitioner has also submitted that no case is made out under Section 420 of the Indian Penal Code and reliance has been placed on the judgments of the Supreme Court in the cases of **Alpic Finance Ltd. vs. P. Sadasivan and Another** reported in **2001 (3) SCC 513**, **R.S. Nayak vs. A.R. Antulay and Another** reported in **1986 (2) SCC 716**, **Hari Sao and Another vs. State of Bihar** reported in **1969 (3) SCC 107** and **Ram Jas vs. State of U.P.** reported in **1970(2) SCC 740**.

17.Learned counsel for respondent No.2 has placed reliance on the judgments of Supreme Court in the cases of **Vijayander Kumar and Others vs. State of Rajasthan and Another** reported in **2014(3) SCC 389**, **State of Bihar vs. P.P. Sharma and Another** reported in **1992 Supp.(1) SCC 222**, **Rishipal Singh vs. State of U.P. and Another** reported in **2014(7) SCC 215**, **N. Soundaram vs. P.K. Pounraj and Another** reported in **2014(10) SCC 540**, **K. Neelavani vs. State** reported in **2010 (11) SCC 607**, **Kamladevi Agarwal vs. State of West Bengal and Others** reported in **2002 (1) SCC 555**, **Rajiv Thapar and Others vs. Madan Lal Kapoor** reported in **2013(3) SCC 330** and **State of Madhya Pradesh vs. Surendra Kori** reported in **2012(10) SCC 155** on the point that when the set of facts may make out a case of civil nature, only because of this fact that civil remedy is available, this cannot be made a ground to quash the criminal proceedings.

18. Reliance has also been placed on the judgments of Supreme Court in the cases of **Sheela Rani vs. State of U.P. and Anr.** reported in **2006 (2) SCC (Cri) 256**, **State of Rajasthan vs. Ravi Shankar Srivastava** reported in **2011(10) SCC 632**, **State of Telangana vs. Habib Abdullah Jeelani and Ors.** reported in **2017(2) SCC 779** and **Rukmani Mahato vs. State of Jharkhand** reported in **2017 SCC Online SC 959** on the point that exercise of Section 482 of the Cr.P.C. cannot be made to grant relief having effect of grant of bail in favour of the petitioner.

19. Heard counsel at length and perused all the documents submitted by both the parties.

20. The gist of arguments from the petitioner's side firstly is that the land in question is a private property and secondly that the parties to the transaction were not aware of the status of land in question, hence, there has been no illegality in the transaction of sale and even if it is assumed that the property in question has a dispute being a Waqf Property, then without having such knowledge, it cannot be held that the petitioner or the co-accused person had an intention to cheat to respondent No.2.

21. The gist of arguments from the respondents' side is to this extent

that firstly the petition is not maintainable, secondly the petitioner and the co-accused had knowledge that the property in question was a Waqf Property and thirdly the land in question is still a Waqf Property since the matter is *sub judice* and pending before this High Court.

22. Though it is raised as a question before this Court that the land in question is a private property or Waqf Property, but it cannot be determined by this Court, for the simple reason that the judgment and finding of the Waqf Tribunal is under challenge before this High Court in Civil Jurisdiction and the matter will be dealt with effectively in that case, from which a clear finding would be available regarding the status of the land in question. Hence, for these reasons, the arguments submitted on behalf of the petitioner that the land in question is a private property cannot be entertained by this Court in Criminal Jurisdiction to determine and give a finding in this respect.

23. The second question raised on behalf of the petitioner is that the petitioner and the co-accused persons has no knowledge that the property was recorded as Waqf Property and that there had been a Gazette Notification to this effect. On perusal of the complaint filed by respondent No.2 to the CSP Police, it appears that there is a clear statement of respondent No.2, that subsequent to civil transaction he came to know in the year 2012 that the land in question bearing Khasra No.199/2 of area 6.06 acres was declared as Waqf Property vide notification dated 1.9.2017. He has further stated that he approached this petitioner, then he was informed that

the petitioner had knowledge that the land in question was recorded as Waqf Property but he gave assurance that he will either get the Gazette Notification cancelled or refund him the price of land at the market rate. Similar statement has been given by respondent No.2 under Section 161 of Cr.P.C. which is a direct evidence against this petitioner in the charge-sheet filed against him.

24. The entry in the revenue records subsequent to purchase made by co-accused Shrirang Bobde and the purchase made by respondent No.2 cannot be regarded as absolute unless and until dispute regarding the land in question being a Waqf Property is not resolved by the Court finally. The fact that respondent No.2 is still in possession of the land in question is not a matter in dispute and this by itself cannot be held that he is entitled for the possession being lawful owner of the concerned land. Hence, for these reasons, I am of the view that this petition is without any substance which is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)

Judge