

**201 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-48530-2017

Date of decision: March 22, 2018

Khajani and another

....Petitioners

Versus

State of Haryana and another

....Respondents

CRM-M-828-2018

Om Parkash and others

....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Sudhir Rana, Advocate for
Mr. Keshav Pratap Singh, Advocate
for the petitioners.

Mr. Ashok Muthreja, DAG, Haryana.

Mr. Shekhar Verma, Advocate
for respondent No.2.

RAJ SHEKHAR ATTRI, J.(ORAL)

By this order I shall dispose of above captioned twin petitions as common question of law and facts arises therein and both of them have been originated from common order of summoning in a complaint.

Both these petitions have been filed under Section 438 Code of Criminal Procedure for grant of anticipatory bail to the petitioners in case bearing criminal complaint No.11442 of 2015 dated 25.08.2015, under Sections 420, 463, 464, 465, 468, 471, 506, 120-B of the Indian Penal Code.

Initially one Gheesa was the owner of the land in question. He left behind 12 legal heirs which are Khazani (widow); Satya Prakash @

Satte @ Sat Narayan, Om Parkash, Jai Parkash, Harish and Jitender (sons); Smt. Kamlesh, Smt. Krishna, Smt. Bimlesh, Smt. Mahesh, Smt. Manju and Smt. Parkash (daughters). However, mutation was sanctioned only in favour of 07 legal heirs i.e. Smt. Khazani (widow); Parkash, Kamlesh, Krishna (daughters) and three sons namely, Satya Prakash @ Sattee @ Sat Narayan, Om Parkash and Jai Parkash. Five legal heirs namely, Harish, Jitender, Smt. Bimlesh, Smt. Mahesh and Smt. Manju were left over in the mutation. However, no reason has been assigned for not including their names in the mutation.

After sanctioning of the mutation, Satya Prakash @ Sattee @ Sat Narayan, Om Parkash, Jai Parkash, Smt. Krishna, Smt. Kamlesh, Smt. Parkash and Smt. Khazani had transferred the land by way of sale deed bearing document No.2 dated 06.04.1993 in favour of Indergeet Singh Nath and mutation No.947 entered accordingly. Subsequent, said Indergeet Singh Nath transferred the same land vide sale deed bearing document No.190 dated 19.04.2004 in favour of Satyavir Yadav. Complainant has alleged that Satyavir Yadav got the land partitioned and further sold the same to Smt. Khem Chandi and Ashok Kumar. The last vendees Khem Chandi and Ashok Kumar further sold the land to the complainant company-M/s Five Reverse Township Pvt. Ltd.

The remaining five legal heirs of deceased Gheesa i.e. Harish, Jitender, Smt. Bimlesh, Smt. Mahesh and Smt. Manju have filed the civil suit challenging the mutation and subsequent transfers. Copy thereof is already placed on record as Annexure P-1 vide which they are claiming declaration to the effect that they are also owners in equal shares along with remaining legal heirs and claimed 1/12 share each. The said suit is stated to

be still pending. However, respondent No.2-M/s Five Reverse Township Pvt. Ltd. filed the complaint bearing No.11442 of 2015 before the Judicial Magistrate Ist Class, Gurgaon against abovesaid original vendees under Sections 420, 463, 464, 465, 467, 468, 471, 506 and 120-B of the Indian Penal Code on the allegations alleging therein:-

2. That the complainant is a reputed developer comprised of law abiding and peace loving persons. The complainant company was purchasing land in and around Gurgaon. In February 2008, Khem Chandi wife of Shri Chand son of Bansi resident of village Ghata, Tehsil Sohna, District Gurgaon and Ashok Kumar son of Matadin resident of village Ulhawas, Tehsil Sohna, District Gurgaon approached the complainant and represented that they were the lawful, absolute and full fledged owners in possession of the land bearing rectangle no.25 killa no.2/1/2(7-12), 3/1(4-12), rectangle no.13 killa no.22(6-2) situated in the revenue estate of Ulhawas, Tehsil Sohna, District Gurgaon. They further stated that the said land was free from all types of loans, liens, mortgages, litigations, disputes, charges, encumbrances etc., and that they have the absolute authority to sell their aforesaid land.

4. That the complainant company was shocked to receive summons of a suit for declaration with consequential relief of permanent injunction titled 'Harish etc. Vs. Satya Prakash etc.' from the court of Civil Judge, Gurgaon in which the above mentioned land of the complainant company was shown as disputed. On making enquiries, it transpired that the said suit had been filed by Harish, Jitender claiming to be son and Smt. Bimlesh, Smt. Mahesh and Smt. Indu claiming to be daughters of Gheesa. They claimed in the said suit that Satya Prakash, Om Parkash, Jai Prakash, Krishna, Kamlesh, Smt. Prakash, daughters and Khazani widow of Gheesa i.e. defendants No.1 to 7 of the said suit were not the only heirs of Gheesa and that the said plaintiffs namely Harish etc. were also heirs of Gheesa. The said Harish etc. stated that their names were mentioned as heirs of Gheesa as per mutation no.1595 dated 23.11.2005 in respect of mortgagee rights in the name of Gheesa. They further claimed that mutation no.920 dated 6.11.1992

sanctioned in favour of Satya Prakash, Om Parkash, Jai Prakash, Krishna, Kamlesh, Prakash and Khazani i.e. Defendants no.1 to 7 was illegal and wrongly sanctioned and it ought to have been sanctioned in favour of plaintiffs of the said suit namely Harish etc. as well.

After conducting preliminary enquiry, learned magistrate vide order Annexure P-4 for the offences under Sections 420, 463, 464, 465, 467, 468, 471, 506 and 120-B IPC has summoned Satya Prakash, Om Parkash, Jai Prakash, Krishna, Kamlesh, Prakash and Khazani for commission of offences punishable under Sections 420, 467, 468, 471 and 120-B IPC.

Learned counsel for the petitioners has submitted that mutation have been correctly sanctioned and there is no fault of theirs but on the other hand learned counsel for the complainant has submitted that the civil suit is a collusive one and has been filed at the instance of the petitioners. It has also been submitted that even these persons have submitted affidavit that they are only legal heirs.

I have heard learned counsel for the parties and gone through the record.

Keeping in view the facts and circumstances of the case and also that nothing is to be recovered from the petitioners, both petitions are allowed and petitioners are directed to appear before the trial court and in case they surrender they be enlarged on bail to the satisfaction and subject to the conditions, if any, imposed by the trial court.

(RAJ SHEKHAR ATTRI)
JUDGE

March 22, 2018
m. sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No