

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 200 of 2004**

Order Reserved on : 30/07/2019

Order Delivered on : 27/09/2019

- Anil Lunia S/o D.C. Lunia, aged about 28 years, R/o HIG-111, Padmanabhpur, Durg (C.G.)

---- Petitioner**Versus**

1. Sachchidanand Tiwari, aged about 45 years, S/o Shri Laxmi Narayan Tiwari, R/o. LIG-14, Padmanabhpur, Durg (C.G.), Tahsil District – Durg (C.G.)
2. State of Chhattisgarh : S.O. Police Station Pulgaon, Durg (C.G.)

---- Respondents

For Petitioner	:	Shri V.G. Tamaskar, Advocate.
For Respondent No.1	:	Shri Praveen Dhurandhar, Adv.
For Respondent No.2	:	Shri Anant Bajpayee, P.L.

Hon'ble Smt. Justice Rajani Dubey**C A V Order****27/09/2019**

01. Challenge in this revision petition is to the order dated 14.01.2004 passed in Criminal Revision No.160/2003 by Additional Sessions Judge, Durg, whereby the learned Additional Sessions Judge allowed the revision of complainant Sachchidanand Tiwari (respondent No.1 herein) directing the trial Court to take cognizance of the offence and proceed against the petitioner in accordance with law.

02. Brief facts of the case are that complainant (respondent No.1) had filed a complaint against the petitioner and five other persons under Section 420, 468, 471 read with section 34 IPC before the Chief Judicial Magistrate, Durg. On 21.03.2003, the learned Chief Judicial Magistrate, Durg, after recording the evidence adduced by the complainant and report submitted by the concerned police officer, dismissed the complaint of the complainant. Against the dismissal of complaint case, the complainant filed revision petition before the learned Additional Sessions Judge, which was allowed on 14.01.2004. Hence, this revision by the petitioner.

03. Learned counsel for the petitioner submits that the learned Additional Sessions Judge failed to see that the entire complaint is mis-conceived because the same has been filed without any demarcation report as per law of the land. He further submits that unless the recitals of the registered sale deed are challenged by the complainant himself, a criminal complaint is not maintainable in view of Section 115 of the Evidence Act. He also submits that the contents of a registered sale deed can be questioned only before a civil Court having competent jurisdiction. The plot in question is situated within the territorial jurisdiction of Durg Municipal Corporation and as such the complainant should have first approached authorities of Corporation for the purpose of demarcation to fix the boundary of his plot in question based on survey marks and merely measuring the plot without

referring to survey marks is against every norms of law made for demarcation. It is next submitted that in the worst case, the complainant should have approached the authorities appointed under Chhattisgarh Land Revenue Code, who could have noticed all the adjoining owners of the plot in question, and determined its boundaries by a proper technical demarcation but the learned revisioner Court has mechanically passed the impugned order on oral submission of the complainant and the witnesses whose statements are contrary to a registered sale deed, which is also a public document. He also submits that the demarcation done by the Patwari was confined to only one plot, rather the complainant should have not only got measured his plot but also the entire area. It is further submitted that the petitioner is neither the scribe of sale deed nor the previous owner of the plot in question and his name has been maliciously and falsely implicated by the complainant. In support of his argument, he placed reliance on the decisions of Supreme Court in the matter of **V.P. Shrivastava V. Indian Explosives Limited and others**¹ and this Court's order dated **12.12.2013** passed in **W.P. No.3885/2005 (Smt. Renuka Gupta and another V. State of Chhattisgarh and ors.)**.

04. On the other hand, learned counsel for respondent No.1 supported the impugned. He placed reliance on the decision of Supreme Court in the matter of **Sau. Kamal Shivaji**

¹ (2010) 10 SCC 361

Pokarnekar V. The State of Maharashtra & Ors².

05. Heard learned counsel for the parties and perused the material available on record.

06. The learned Sessions Judge finds that the trial Magistrate dismissed the case of the complainant only on the ground that the complainant has also available the civil remedies to redress his grievance. The learned Sessions Judge also finds that the complainant had available two remedies one is criminal and another one is civil, but it cannot be said that criminal remedy is binding on the complainant or the applicant. In fact, the legal position is that if any complainant has both civil and criminal remedy on some point, then its criminal remedy cannot be denied on the grounds that he has civil remedy on same point. It has also been found by the learned Additional Sessions Judge that the complainant has been able to prove its case by leading oral as well as documentary evidence against the petitioner and other accused persons, set aside the order dated 21.03.2003 and remanded the case to trial Magistrate with a direction to take cognizance against the applicant herein and other persons and proceed in accordance with law.

07. The Hon'ble Supreme Court in the matter of **Sau. Kamal** (supra) held in para 9, which reads thus:-

“9. Having heard the learned Senior counsel and examined the material on record, we are of the considered view that the High Court ought not to

2 AIR 2019 SC 847

have set aside the order passed by the Trial Court issuing summons to the respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the respondents. The correctness or otherwise of the said allegations has to be decided only in the trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

08. In the complaint case also, the complainant produced oral and documentary evidence, which disclosed prima facie case against the applicant and other accused persons. That apart, the instant case is of both nature i.e. civil and criminal, and the complainant cannot be deprived of his right holding that he has civil remedy and he should avail that one. This court do not find any illegality or infirmity in the impugned order dated 14.01.2004 warranting interference by this Court.

09. In view of the aforesaid discussion and in view of judgments of Hon'ble the Apex Court in the matter of **Sau Kamal** (supra), the revision petition is liable to and is hereby dismissed.

Sd/-

(Rajani Dubey)
JUDGE