

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.795 of 2018**

- State Of Chhattisgarh Through Its Superintendent Of Police, Anti Corruption Bureau, Raipur, District Raipur, Chhattisgarh.

---- **Petitioner****Versus**

1. Bhanwar Lal Jain Late Surajmal Jain, Aged About 72 Years The Then Government Advocate, Durg, R/o Padmnabhpur, Durg, Distt. Durg, Chhattisgarh.
2. Prashant Agrawal, Late Dinesh Prasad Agrawal, Aged About 51 Years R/o Ward No. 10, Near Mahamaya Mandir, Dhamdha, District Durg, Chhattisgarh.

---- **Respondents**-----
For the Petitioner/State : Shri Raghavendra Verma, Govt.

Advocate

For the respondents : Dr. Saurabh Kumar Pande, Advocate
-----**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment On Board****13.02.2019.**

1. Heard on application for grant of leave to appeal under Section 378(3) of CrPC.
2. This petition is preferred against the judgment dated 14.11.2017 passed by Special Judge under the Prevention of Corruption Act, 1988, Durg (CG) in Special Case No.03/2004 wherein the said Court acquitted respondent No.1 for commission of Offence under Sections 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 (for short 'the Act 1988') and also acquitted respondent No.2 for the charges under Sections 13(1)(d) read with Section 13(2) of the Act, 1988 and under Section 467, 468 and 120B of the Indian Penal Code.

3. A ceiling case was decided against accused Late Dinesh Agrawal and his land measuring 306.70 acres declared surplus by Additional Commissioner, Raipur. A suit for declaring said order void was pending before the Court of Civil Judge Class-I, Durg. Allegation against the respondents are that both the respondents have made criminal conspiracy to the effect that in the Court of Civil Judge Class-I, Durg they will get the land declared as surplus land measuring 306.70 acres reduced to 14.39 acres of one co-accused Dinesh Agrawal through compromise and for the said work they agreed each other and moved compromise application dated 13.01.1989 under Order 23 Rule 3 of CPC before the Civil Judge Class-II Durg in pending Civil Suit No.5A/85. Respondent No.1 Bhanwar Lal Jain being Government Pleader knew that he is not legally authorised for the said compromise from the State Government but filed application to get pecuniary advantage which was allowed and decree was passed against the Government.

4. As per the version of the prosecution, respondent No.1 being a Government Pleader misused his post and for taking illegal advantages they moved such compromise application under his own signature in the Civil Court and on the basis of the compromise application, order of the Additional Commissioner has been got declared null and void and therefore, surplus land of Dinesh Agrawal is reduced to 14.39 acres in place of 306.70 acres.

5. From the material on record, it is clear that after judgment of the civil Court, proceedings for Ceiling Act was again initiated in

the Court of Sub Divisional Officer, Durg who declared 14.39 acres of land of Dinesh Agrawal to be surplus land vide order dated 27.9.1991. It means after the compromise the proceedings were again initiated before the competent authority under Ceiling Act and he was free to decide as to how much of land be declared as surplus land. Therefore, any compromise made between the parties in the civil Court has no adverse effect to the proceedings of Sub Divisional Officer which was later on initiated and decided.

6. From the record of the trial Court it also appears that the land measuring 39.07 acres, 39.32 acres and 48.07 acres were recorded in the names of Asharam, Harkhram and Govind Prasad, this land was not included in the ownership of said Dinesh Agrawal. Dinesh Agrawal was competent to execute sale deed as recorded owner before the enforcement of Ceiling Act and the said transfer was legal. If the land was already transferred before coming into the force of the Ceiling Act said transfer is legal and therefore, land cannot be included to be owned by Dinesh Agrawal. Proceedings right from Sub Divisional Officer i.e. competent authority under the Ceiling Act to the Commissioner, Raipur conducted as per due course of law and it can be challenged before the higher court/authority.

7. Charges under Sections 7 and 13(1)(d) of the Act, 1988 can be established only when any person by corrupt or illegal means obtains for himself or for any other person any valuable thing or pecuniary advantage. In the present case there is no direct evidence regarding respondent No.1 obtained valuable thing or pecuniary advantage. Therefore, even if the compromise

application filed by respondent No.1 was without authority, charges under Sections 7 and 13(1)(d) of the Act, 1988 cannot be established for want of evidence of obtaining valuable things.

8. The proceedings were initiated by the competent authority under the Ceiling Act and it is not the case where respondent No.2 has made any false documents with intend to cause damage or injury to the Public. For establishing charges under Section 467, 468 & 120B of IPC for conspiracy, forgery the basic evidence is preparation of false documents. But there is no evidence against respondent No.2 for making false documents. There is also no evidence against respondent No.2 for obtaining valuable things by corrupt or illegal means. Therefore, charges under Sections 7 & 13(1)(d) of the Act, 1988 and under Section 467 & 468 read with Section 120 IPC is not established. The trial Court has elaborately discussed the entire evidence and recorded a finding of acquittal. After reassessing the entire evidence, this Court has no reason to substitute a contrary finding. It is not a case where the respondents should be called for full consideration of the case. Therefore, it would not be proper for this Court to grant leave to appeal.

9. Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE