

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(CR) No. 52 of 2013

1. Ashok Kumar Jaadwani, S/o. Shri Rajaldas Jaadwani, Aged About 57 Years.
2. Smt. Manju Jaadwani, W/o. Ashok Jaadwani, Aged About 54 Years.

Both R/o. Nalghar, Ahmed Ji Colony, P.S. Kotwali, Raipur, Presently At New Rajendra Nagar, Sector 7, C-170/7, P.S. New Rajendra Nagar, Raipur, District : Raipur, Chhattisgarh

---- Petitioners

Versus

State Of Chhattisgarh, Through The Police Station, Rajendra Nagar, District Raipur, Chhattisgarh

---- Respondent

 For Petitioners : Mr. Hari Agrawal, Advocate
 For State/Respondent : Mr. Ghanshyam Patel, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

05.03.2019

Heard

1. The present petition is to quash the criminal case pending against the petitioners under Section 420 & 120-B of Indian Penal Code.
2. The facts of this case are that a report was made by one Laxmi Mandhani that she had entered into an agreement with one Kishore Kumar Ganguly on 08.11.1990 for purchase of a Plot bearing No.B-28/07 admeasuring 4000 sq.ft. situated at New Rajendra Nagar which was of Raipur Development Authority (*for short "R.D.A."*). It was stated that after the agreement was executed, the entire sale consideration was paid to Kishore Kumar Ganguly and since the sale deed could have been only executed after the no objection is obtained from the R.D.A., a power of attorney was given in favour of the husband of Laxmi Mandhani to obtain the formalities of no objection from the R.D.A. by seller Kishore Kumar Ganguly. It was stated that the complainant also

do not follow up the matter for execution of sale since the possession of the land was given and also the power of attorney was given in favour of her husband to obtain no objection from R.D.A. to execute the sale deed coupled with the fact that the entire sale consideration was paid. It was further stated that Kishore Kumar Ganguly, the seller (who was one of the other accused) had canceled the power of attorney given in favour of the husband of the complainant Laxmi Mandhani, therefore, no objection could not be obtained from R.D.A. and eventually the sale deed was not executed. Subsequently, it was alleged that the original owner of the land in connivance with the present petitioners in order to deceive the original purchaser taking advantage of the fact that sale deed has not been executed earlier despite entire amount was received again executed sale deed of the same property, therefore, offence was committed.

3. Learned counsel for the petitioners would submit that the original transaction in this case was in the year 1990 and at that time, the petitioners were not in the picture at all. Subsequently, they purchased the property for a consideration of Rs.4 Lakhs approximately in the year 2007 and they had no idea that in respect of the said property earlier transaction exists. It is stated that the petitioners were the bonafide purchasers, therefore, in order to attract the ingredients of Section 415 of I.P.C. the offence is not made out, as no *mens rea* was ever existing. It is stated that in a criminal revision filed by the accused Kishore Kumar Ganguly, which was decided on 05.03.2011 on a finding given by the High Court, the present petitioners have been inculpated and they were not before the High Court as such any finding given against them

would be not binding and in all cases the prosecution has to satisfy the ingredients of Section 415 of I.P.C. exists.

4. State counsel opposes the argument advanced by the learned counsel for the petitioners.
5. Perused the record. Perusal of the record would show that the report was made by Smt. Laxmi Mandhani in the year 2007 to the Superintendent of Police wherein it is stated that the original owner of the plot namely Kishore Kumar Ganguly had in order to deceive the prospective purchaser has entered into sale with the present petitioners who are the subsequent purchasers. It was stated that earlier the entire sale consideration was paid to the said seller Kishore Kumar Ganguly and in order to obtain the no objection from the R.D.A. to execute the sale deed, power of attorney was given in favour of the husband of the complainant, which was subsequently canceled and surreptitiously with the connivance of the present petitioners, the sale deed was executed so as to deceive the first purchaser Smt. Laxmi Mandhani. On such report, after investigation charge sheet was filed under Section 420 of IPC and charges were framed.
6. Perusal of the record further shows that one of the accused Kishore Kumar Ganguly filed a revision against framing of the charges before the High Court which was Criminal Revision No.553/2010 wherein orders were passed on 05.03.2011 and the High Court while dismissing the petition against framing of the charges observed as under :

“16. All these subsequent conducts are prima facie sufficient to indicate that intention of the applicant was fraudulent and dishonest since its inception and in connivance with the subsequent purchaser, he has tried to

deprive the complainant and cause damage to the complainant from the property and from its rightful enjoyment. These circumstances clearly satisfy the commission of cheating to the complainant in connivance with the second purchaser, as defined in Section 415 of the I.P.C. punishable under Section 420 of the I.P.C.”

7. Perusal of Para 16 of the order dated 05.03.2011 passed in Criminal Revision No.553/2010 would show that prima facie the Court gave the finding that in connivance with the subsequent purchaser, the original owner of the land has committed the offence.
8. In order to quash the criminal proceeding it is settled proposition that proceeding can be quashed when prima facie even after acceptance of entire allegations if it appears that it doesn't make out a case, the case can be quashed. In the instant case, in view of the clear finding by High Court which is existing on the face of record that the subsequent purchasers were in connivance with the original seller has committed the offence of forgery cannot be shelved as the very observation makes out a prima facie case against the petitioners. The petitioners shall be at liberty to demolish such prima facie assumption during the course of trial during evidence. At the threshold only by accepting the averments of the petitioners, the charges of criminal case cannot be quashed without going into trial in facts and existing observation against the petitioners.
9. In view of the above, the petition has no merit and accordingly is dismissed.