

HIGH COURT OF CHHATTISGARH, BILASPURCr.M.P.No.244 of 2017

1. Ashok Arora S/o Late Shri Vijirchandra Arora, aged about 66 years, President, Punjab Sanatan Dharmsabha, Jagdalpur, R/o Brindaban Colony, Jagdalpur, District Bastar (CG)
2. J.P. Soni, S/o Late Shri Dwarka Das Soni, aged about 86 years, R/o Pt. Dindayal Upadhyay Ward, Jagdalpur, Bastar (CG) Mukhya Sanrakshak, Punjab Sanatan Dharmsabha Jagdalpur, District Bastar (CG)
3. Satyapal Guruwara, S/o Late Shri Indar Raj Guruwara, aged about 80 years, R/o Indira Ward Jagdalpur, Bastar (CG), Sanrakshak, Punjab Sanatan Dharmsabha Jagdalpur, District Bastar (CG)
4. Ramesh Kapoor, S/o Shri Sitaram Kapoor, aged about 66 years, R/o Wardhman Colony Jagdalpur, Bastar (CG) Senior Vice-President, Punjab Sanatan Dharmsabha Jagdalpur, District Bastar (CG)
5. Vijaypal Khurana, S/o Late Shri Keshav Lal Khurana, aged about 63 years, R/o Lalbag Jagdalpur, Vice-President, Punjab Sanatan Dharmsabha Jagdalpur, District Bastar (CG)
6. Ashok Godi, S/o Shri Hari Kishan Godi, aged about 66 years, R/o Brindaban Colony, Jagdalpur, Bastar (CG) Vice-President, Punjab Sanatan Dharmsabha Jagdalpur, District Bastar (CG)
7. Navratan Jalota, S/o Late Shri Chamanlal Jalota, aged about 55 years, R/o Dharampura, Jagdalpur, Bastar (CG) General Secretary, Punjab Sanatan Dharmsabha Jagdalpur, District Bastar (CG)
8. Vipin Sharma, S/o Late Shri Kishor Chandra Sharma, aged about 62 years, R/o Vardhman Colony, Jagdalpur, Bastar (CG) Treasurer, Punjab Sanatan Dharmsabha Jagdalpur, District Bastar (CG)
9. Omprakash Lakhanpal, S/o Late Shri Kishanchandra Lakhanpal, aged about 75 years, R/o Bodhghat Jagdalpur, Bastar (CG), Legal Advisor, Punjab Sanatan Dharmsabha Jagdalpur, District Bastar (CG)
10. Rajiv Sharma, S/o Late Shri B.K. Sharma, aged about 50 years, R/o Nayapara, Jagdalpur, Bastar (CG) Legal Advisor, Punjab Sanatan Dharmsabha Jagdalpur, District Bastar (CG)

---- Petitioners

Versus

Smt. Sarita Singh, W/o Shri Bhanupratap Singh, aged about 42 years, R/o Pt. Dindayal Upadhyay Ward, Jagdalpur, District Bastar (CG)

---- Respondent

And

Cr.M.P.No.245 of 2017

1. Kamal Sethi, S/o Late Shri Kishan Chandra Sethi, aged about 46 years, R/o Pt. Dindayal Upadhyay Ward, Jagdalpur, District Bastar (CG)
2. Dhiraj Sethi, S/o Late Shri Kishan Chandra Sethi, aged about 37 years, R/o Pt. Dindayal Upadhyay Ward, Jagdalpur, District Bastar (CG)

---- Petitioners

Versus

Smt. Sarita Singh, W/o Shri Bhanupratap Singh, aged about 42 years, R/o Pt. Dindayal Upadhyay Ward, Jagdalpur, District Bastar (CG)

---- Respondent

For Petitioners:-
For Respondent:-

Mr.Ashish Surana, Advocate
Mr.C.J.K.Rao, Advocate

Hon'ble Shri Justice Sanjay K. AgrawalOrder on Board03/05/2019

1. Since common question of fact and law is involved in these two CrMP's, they are heard together and are being disposed of by this common order.
2. In these two petitions, the petitioners seek quashment and setting aside of the order dated 14.9.2016 passed by the Chief Judicial Magistrate, Bastar at Jagdalpur in Complaint No.166/2016 by which learned CJM has taken cognizance against the petitioners for offence under Section 420 read with Section 34 of the IPC.
3. Punjab Sanatan Dharm Sabha, Jagdalpur is registered society under the Chhattisgarh Society Registration Adhiniyam, 1973 (hereinafter called as 'the Act of 1973') being Registration No.8232 and was registered on 11.9.1979. The said society executed sale deed

through its President Ashok Arora on 26.2.2014 in favour of Kamal Sethi and Dhiraj Sethi, petitioners in CrMP No.245/2017 alienating 5500 sq.ft. of their land for cash consideration of ₹ 49,90,000/-. In the sale deed, it was mentioned that Ashok Arora is authorized by Punjab Sanatan Dharm Sabha on 27.7.2013 and letter was issued on 5.2.2014. The complainant/respondent herein, who was former member of the said society and who has been expelled from membership of the said society filed a criminal complaint for offence under Section 420, 406, 120B, 500 and 504 of the IPC against the petitioners of CrMP No.244/2017 and other two petitioners of CrMP No.245/2017, who are purchasers of the said land in question alleging that without permission of the Registrar as envisaged under Section 21 (1) of the Act of 1973 they have sold the land in favour of Kamal Sethi and Dhiraj Sethi on 26.2.2014 in the lower price and thereby committed the above-stated offences. The complainant examined herself in support of complaint.

4. Learned CJM on 14.9.2016 considered the matter and found that there is sufficient material for proceeding against the petitioners and directed for registration of offence under Section 420/34 of the IPC and issued process against the petitioners, against which, these petitions under Section 482 of the CrPC have been filed by the petitioners herein stating inter-alia that if the allegations made in the complaint are taken at their face value and accepted in their entirety, then even do not *prima facie* constitute any offence or make out a case against the petitioners, as such, order taking cognizance as well

criminal complaint deserves to be quashed.

5. The complainant/respondent has appeared before this Court and filed reply supporting the order taking cognizance stating inter-alia that learned CJM is fully justified in registering and taking cognizance of the offence under Section 420/34 of the IPC against the petitioners.
6. Rejoinder has been filed by the petitioners controverting the averments made in the return.
7. Mr.Ashish Surana, learned counsel for the petitioners, would submit that even if the allegations made in the complaint are taken at their face value, no offence under Section 420/34 of the IPC is made out against the present petitioners and therefore, initiation & continuance of criminal case against the petitioners is nothing but abuse of process of law. Therefore, order taking cognizance against the petitioners deserves to be quashed.
8. On the other hand, Mr.C.J.K.Rao, learned counsel for the respondent, would submit that the CJM is absolutely justified in taking cognizance for offence under Section 420/34 of the IPC against the petitioners as the complaint and material available before the Court *prima-facie* discloses the commission of offence under Section 420/34 of the IPC.
9. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
10. From a bare perusal of the complaint filed by the respondent

herein, it is quite clear that she was former member of Punjab Sanatan Dharm Sabha, Jagdalpur, which she has clearly pleaded in para-5 of the complaint and she has grievously aggrieved against the act of Punjab Sanatan Dharm Sabha, Jagdalpur expelling her from membership of the society. Principal averment made in paras-2 to 4 is that 5500 sq.ft. of land situated at near Anupama Talkies, Jagdalpur was sold by the petitioners of CrMP No.244/2017 to the petitioners of CrMP No.245/2017 on 26.2.2017 by registered sale deed for cash consideration of ₹ 49,90,000/- in lower price, it could have been sold in higher price. It was further pleaded that on that day Punjab Sanatan Dharm Sabha, Jagdalpur was shown to be unregistered society and land was sold to petitioners-Kamal Sethi & Dhiraj Sethi without permission of the Registrar under Section 21 (1) of the Act of 1973 and thereby they have committed the offence under Section 420/34 of the IPC.

11. Section 415 of the IPC provides as under:-

“415. Cheating.-Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.

Explanation.-A dishonest concealment of facts is a deception within the meaning of this section.”

12. The ingredients required to constitute the offence of “cheating” under Section 415 are:-

(i) There should be fraudulent or dishonest inducement of a person by deceiving him;

(ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property, or

(b) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) In cases covered by (ii) (b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

13. The Supreme Court in the matter of **Robert John D'Souza and others v. Stephen V. Gomes and another**¹ while considering the ingredients of Section 415 of the IPC held as under:-

“one of the essential ingredients for the offence of cheating is deception, but in the present case, from the contents of the complaint it nowhere reflects that the complainant was deceived or he or anyone else was induced to deliver the property by deception. What was done, was so reflected in the resolutions, and sale deeds.”

14. The Supreme Court in the matter of **Robert John D'Souza** (supra) was considering the alienation made by the Karnataka Registration Act, 1970. In that case, criminal complaint was filed by society registered under the Karnataka Societies Registration Act after 12 years of execution of registered sale deed by non-member of the society, in which Their Lordships quashed the complaint by observing as under:-

“16. In view of the above discussion and facts and circumstances of the case, we are of the view that none of the offences for which the appellants are

1 (2015) 9 SCC 96

summoned, is made out from the complaint and material on record. We further find that it is nothing but abuse of process of law on the part of the complainant to implicate the appellants in a criminal case after a period of twelve years of execution of registered sale deeds in question, who is neither party to the sale deeds nor a member of the Society. Therefore, we allow the appeal and set aside the orders passed by the High Court and that of the courts below. Accordingly, the order passed by the Magistrate summoning the appellants in the criminal complaint filed by Respondent No. 1, in respect of offences punishable under Sections 406, 409 and 420 IPC, also stands quashed.”

15. Reverting to the facts of the present case, it is quite vivid that the complainant has ceased to be a member of Punjab Sanatan Dharmsabha, Jagdalpur. In para-1 and 5 of the complaint, she has stated her strong grievance against the said society against her expulsion. In the complaint, it has been stated that society is registered as reflected from para-2 of the complaint, it is registered way back from 11.9.1979, as such, averment made in the sale deed that Punjab Sanatan Dharmsabha is unregistered is of no consequence and deserves to be ignored.
16. True, it is that the land was sold without permission of the Registrar as required under Section 21(1) of the Act of 1973, but it is stated at the Bar that on 29.3.2017, the Registrar, Firms and Societies, Raipur as provided under Section 21(4) of the Act of 1973 for violation of Section 21(1) of the Act of 1973 has imposed penalty of ₹4,99,000/- upon the said society which the society have been deposited. In my considered opinion, since the complainant is not a member of Punjab Sanatan Dharmsabha on the date of filing the

complaint i.e. 18.12.2015 and she has strong grievance against the members of the society for expulsion, as such, the complaint filed by the respondent herein cannot be said to be bonafide complaint. Even otherwise, post-facto penalty for alienation of land has already been imposed by the Registrar, which is permissible to be imposed under Section 21(4) of the Act of 1973 condoning the defect and violation of Section 21(1) of the Act of 1973.

17. Following the principle of law laid down by the Supreme Court in **Robert John D'Souza** (supra), in my considered opinion, initiation and continuance of proceedings against the petitioners are nothing but abuse of process of law as no criminality is involved in making alienation of the subject land to the petitioners of CrMP No.245/2017. Accordingly, initiation and continuance of proceedings against the petitioners in Complaint Case No.166/16 (Smt. Sarita Singh v. Ashok Arora and others) pending in the Court of Chief Judicial Magistrate, Bastar at Jagdalpur are hereby quashed.

18. CrMP are allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-