

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 56 of 2019**

Order Reserved on : 28/08/2019

Order Delivered on : 28/11/2019

- Smt. Julekha Khatun W/o Shri Abdul Majid, aged about 44 years, R/o Kelabadi, Durg, Tahsil & District Durg (C.G.)

---- Applicant**Versus**

1. Chandrakant Gomasta S/o Late Ishwarilal Gomasta, aged about 59 years, R/o village Anjora, Tahsil & District Durg (C.G.)
2. State of Chhattisgarh, Through : District Magistrate, Durg (C.G.)

---- Respondents

For Applicant	:	Shri Mohit Kumar and Ms. Monika Singh, Advocates.
For Respondent No.1	:	Shri Jitendra Gupta, Adv.
For Respondent No.2	:	Ms. Reena Singh, P.L.

Hon'ble Smt. Justice Rajani Dubey**C A V Order****28/11/2019**

01. Challenge in this revision petition is to the order dated 25.07.2018 passed in Criminal Revision No.67/2018 by 2nd Additional Sessions Judge, Durg, District Durg, setting aside the order dated 03.11.2017 passed by Judicial Magistrate First Class, Durg, in Complaint Case No.9278/2017.
02. Brief facts of the case are that the applicant had filed complaint case against respondent No.1 -Chandrakant

Gomasta on the ground that respondent No.1, after receiving the amount of Rs.13,00,000/- (Rs. Thirteen Lac only), sold the residential house-cum-land bearing Kh.No.725/83, 725/84 area 2204 square feet situated at Kasaridih, Durg, to the applicant by registered sale deed dated 03.02.2012. This house was registered in the name of respondent No.1 and he was in possession of the said house. The respondent No.1 has sold the property to the applicant with the consent of all the family members, received the amount of consideration and used the same for marriage of his daughter. After completion of marriage ceremony, other family members filed a civil suit against the applicant and respondent No.1 before the Court of learned Additional District Judge, Durg, claiming relief to declare the sale deed dated 03.02.2012 null and void on the ground that the property was purchased by their father in the name of respondent No.1. Further case is that after getting noticed that the respondent No.1 has cheated her as he had suppressed regarding the status of sole property and the amount was received by him, the petitioner lodged a report before the police station but no action was taken, thereafter, she filed a complaint case before Judicial Magistrate First Class, Durg. The learned JMFC, after recording the evidence under Section 200 of Cr.P.C., registered the offence under Section 420 IPC against respondent No.1 and issued bailable warrant against him. Against the registration order, respondent No.1 filed revision petition before the Court of

Sessions and the learned 2nd Additional Sessions Judge set aside the order dated 03.11.2017. Hence, the present criminal revision.

03. Learned counsel for the applicant submits that the respondent No.1 was having knowledge that the plot was purchased by his father in his name, and later on the house was constructed, but even after this, he sold that property keeping over possession of him to the petitioner, received the whole amount and used the same, which clearly make out a case against respondent No.1 under Section 420 IPC. He further submits that the learned 2nd Additional Session Judge passed an order by which the sale deed executed by respondent No.1 in favour of the applicant has been declared null and void vide judgment dated 29.09.2018. He also submits that the criminal revision as well as the civil suit have been decided by the same presiding officer of the Court exercising civil and criminal jurisdiction. It is next submitted that the learned Addition Sessions Judge has passed judgment wherein, in para 24, it has been observed that the property which was sold by respondent No.1 to the applicant was found to be of Joint Hindu Family so the sale deed has been declared null and void. This finding of the learned Additional Sessions Judge is sufficient to prove that the respondent No.1 has cheated the applicant. Therefore, the impugned order deserves to be set aside.

04. Learned counsel for respondents supported the

impugned order.

05. I have heard learned counsel for the parties and perused the material available on record.

06. In the case in hand, the applicant has filed certified copy of judgment dated 29.09.2018 passed in Civil Suit No.37-A/2012 by which the registered sale deed dated 03.02.2012 executed by defendant No.1 (respondent No.1 herein) in favour of defendant No.2 (applicant herein) of the land and house situated at village Kasardih (Kasardih Ward Durg) P.H.N. 25, Tahsil and District Durg, Khasra No.725/83 and 725/84, rakba 0.020 hector/204.83 square meter, the right and parts of plaintiffs upto 1/5-1/5 has been declared null and void.

07. As regards the cheating alleged to have been committed by the respondent No.1, the said term "Cheating" has been defined in Section 415 of the IPC, which is reproduced herein below:-

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 or 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".

08. In so far as registration of case under Section 420 IPC is concerned, a bare reading of Sections 203 and 204 Cr.P.C.

shows that Section 203 Cr.P.C. requires that reasons should be recorded for the dismissal of the complaint. Contrary to it, there is no such requirement under Section 204 Cr.P.C. Therefore, the order for issue of process in particular case without recording reasons, does not suffer from any illegality. That apart, in summoning the accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. The court is not required to evaluate the evidence and its merits. The standard to be adopted for summoning the accused under Section 204 Cr.P.C. is not the same at the time of framing the charge. For issuance of summons under Section 204 Cr.P.C., the expression used is "there is sufficient ground for proceeding....", whereas for framing the charges, the expression used in Sections 240 and 246 IPC is "there is ground for presuming that the accused has committed as offence.....". At the stage of taking cognizance of the offence based upon a police report and for issuance of summons under Section 204 Cr.P.C., detailed enquiry regarding the merits and demerits of the case is not required. The fact that after investigation of the case, the police has filed charge sheet along with the materials thereon may be considered as sufficient ground for proceeding for issuance of summons under Section 204 Cr.P.C.

09. It is evident from the judgment dated 29.09.2018 passed

in Civil Suit No. 37-A/2012 that the disputed property was a Joint Hindu Property and respondent No.1 has executed the sale deed in favour of the applicant and received the whole amount of consideration knowing that the land and the house belong to joint hindu family. The learned Magistrate, after statement of the complainant, registered the case against respondent No.1 and prima-facie also find the case under Section 420 IPC against him. The learned Sessions Judge, while passing the impugned order dated 25.07.2018, has not considered the material aspect of the matter and set aside the order of learned Magistrate, which is not in accordance with the law.

10. In the result, the petition is allowed. The impugned order dated 25.07.2018 passed by the learned Addition Sessions Judge, Durg is set aside. The order dated 03.11.2017 passed by the learned Magistrate, Durg, in Complaint Case No.9278/2017 is hereby affirmed.

Sd/-

(Rajani Dubey)
JUDGE