

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 928 of 2018

Order Reserved on : 17.08.2021

Order Delivered on : 25.10.2021

Ambika Prasad Dewangan, S/o Late Dwarikanath Dewangan, aged about years, R/o Village- Urla, Tahsil & District- Durg (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Station House Officer, Police Station- Supela, District- Durg (C.G.)
2. Balkrishna Borghate, S/o Late Shri Motiram Borghate, R/o 24/18 Nehru Nagar, East Bhilai, District- Durg (C.G.)

---- Respondents

For Petitioner	:	Mr. H.B. Agrawal, Sr. Advocate with Mr. Pankar Agrawal, Advocate.
For State/Res. No. 1	:	Mr. Devendra Pratap Singh, Dy. A.G.
For Respondent No. 2	:	Mr. Rahul Tamaskar, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Order

1. The petitioner has filed this petition under Section 482 of the Cr.P.C. for quashing FIR No. 0015 dated 06.01.2018 registered at Police Station- Supela, District- Durg (C.G.) against him on the basis of complaint made by respondent No. 2- Balkrishna Borghate for committing offence punishable under Sections 420 of I.P.C. as well as challan and the further proceeding pending before Chief Judicial Magistrate, Durg for 27.04.2018 as Criminal Case No. 2503/2018 (State of Chhattisgarh Vs. Ambika Prasad Dewangan).
2. The brief facts, as projected by the petitioner, are that respondent No. 2/ complainant has made a complaint against the petitioner alleging that he owned plot No. 16 area admeasuring 2700 sq.ft. in Model Town, Junwani, old Khasra No. 325/2 & new Khasra No. 1046 situated at Tahsil & District-

Durg (C.G.). As per the sale deed executed in the year 1969, the boundary reflects 5 ft. road on North followed by House of one Shrawan Kolhe and Choudhary, vacant land on South, 20 ft. road on East and 30 ft. on the West, which he has purchased from previous owner- Lakshman Das as per sale deed executed on 10.03.1969. The petitioner has sold 1200 sq.ft. of land to one K.D. Meshram, 1400 sq.ft. to one Manisha Shrivastava and 400 sq.ft. to Laxmi Meshram W/o K.D. Meshram. The petitioner by committing fraud has sold the land in which the complainant has ownership and was in possession of the land. The petitioner has converted the land into 1200, 1400 & 400 sq.ft. On the basis of his complaint, FIR No. 15/2018 has been registered against the petitioner on 06.01.2018 at Police Station- Supela, District- Durg (C.G.) for committing offence punishable under Section 420 of IPC.

3. Learned senior counsel for the petitioner would submit that complainant cannot take advantage of his contention as made before the police, therefore, filing of FIR and challan are illegal and abuse of process of law. It has been denied by the sale of land of complainant by him and submitted that old Khasra No. 325/2 became Khasra No. 1046 in Bandobast, the complainant purchased the suit land from one Laxman Das, S/o Jagannath Hedau on 10.03.1969. It was wrongly recorded in the name of Daulat Ram, S/o Gopal at the time of Bandobast which was corrected by Tahsildar- U.S. Agrawal in Revenue Case No. 13/A-06/2010-11 between Balkrishna Borghate Vs. Saraswati @ Sulochana daughter of Daulatram on 30.08.2011 and name of complainant was ordered to be mutated. This land was never sold by the petitioner to anyone. The case was pending before the trial Court for framing of charges.
4. It has been further contended that there is dispute with regard to demarcation of property and the report dated 15.12.2017 submitted by Special Crime Investigation Unit, Durg Range, Durg addressed to Superintendent of Police, Durg, wherein it

has been held that it is a case of revenue department and no cognizable offence is made out against the petitioner, still the Station House Officer, Supela has registered second FIR against the petitioner. Registration of second FIR is against the judgment passed by Hon'ble the Supreme Court in **Anju Choudhary Vs. State of U.P. reported in 2013 (6) SCC 384** and **Awadhesh Kumar Jha & others Vs. State of Bihar reported in 2016 (3) SCC 8**. There is a delay in lodging FIR as FIR has been lodged in the year 2018 whereas the alleged offence is of the year 2009. Hence, it is prayed that registration of FIR and subsequent submission of final report are illegal and are liable to be quashed.

5. The State has filed their return, in which, they have stated that since the final report has already been submitted, therefore, present petition is not maintainable. It has been further contended that the FIR has been rightly registered as per the investigation report, commission of offence under Section 420 of IPC is made out against the petitioner, therefore, the instant petition, is liable to be dismissed.
6. The respondent No. 2 has filed his return contending that the petitioner is an influential person and has been managing to avoid registration of FIR. There are complaints filed by other persons against the petitioner with similar allegations of land related fraud. One Rajesh Tallewar has also made similar complaint against the petitioner on 03.02.2020 & 14.07.2020. Respondent No. 2 has made detailed complaint on 20.12.2017 to Superintendent of Police, Durg followed by complaint dated 12.01.2018. The dimension of the boundary of land of respondent No. 2 were 30 ft. on North and South and 90 ft. on East & West.
7. It has been further contended that the land was mutated in the name of respondent No. 2 in the year 1975 however, the records were not updated later, therefore, the details of the land were missing from record. Respondent No. 1 moved an application for correction of record. On inspection, it was

found that the petitioner's land should have been recorded as part of Khasra No. 1084 which was wrongly recorded as 1046 as evident from report dated 18.10.2011. After correction of record, old Khasra Nos. such as 325/1, 325/2, 325/3, 325/4 and others have been renumbered as 1084 and taking benefit of common number, the petitioner has been claiming the open land (without construction) to be his land and selling it to others by creating forged documents. The petitioner has sold 1200 sq.ft. of land to one K.D. Meshram, 1400 sq.ft. to one Manisha Shrivastava and 400 sq.ft. to Laxmi Meshram W/o K.D. Meshram. The proceedings for correction of record was filed which went till the revenue board. On the basis of order passed by the Revenue Board, the records have been corrected, the land of respondent No. 2 has been recorded as piece of Khasra No. 1084 (1084/565) and correction has been made in B1 Khasra and Rin Pustika.

8. It has been further contended that the ground raised by the petitioner in this petition are nothing but a matter of defence to be taken during course of trial and does not make out a prima facie case for quashing the FIR and challan itself. It is also settled position of law that the inherent powers under Section 482 of the Cr.P.C. are to be exercised rare with a lot of caution and circumspection. From bare perusal of the FIR, it is quite vivid that the offence under Section 420 of IPC is made out against the petitioner. The relevant paragraph of the FIR is extracted below:-

".....आवेदक बाल कृष्ण बोरघाटे पिता स्व.मोतीराम बोरघाटे निवासी 24/18 नेहरू नगर भिलाई जिला दुर्ग के द्वारा श्रीमान पुलिस अधीक्षक महोदय दुर्ग को शिकायत प्रस्तुत किया था। जिसकी जांच विशेष अपराध अनुसंधान ईकाई दुर्ग रेंज दुर्ग के द्वारा किया गया है। आरोपी अंबिका प्रसाद देवांगन द्वारा माडल टाउन जुनवानी में स्थित भूमि खसरा नंबर 325/2 का टुकड़ा प्लॉट नंबर 16 रकबा 0.02 हेक्टेयर भूमि को अपना भूमि बताकर अन्य व्यक्तियों के पास विक्रय कर धोखाधड़ी करना पाये जाने से आरोपी के विरुद्ध धारा 420 भादवि का अपराध पंजीबद्ध करने के निर्देश प्राप्त होने से अपराध पंजीबद्ध कर विवेचना में लिया गया । नकल आवेदन पत्र

जेल है। प्रति, श्रीमान पुलिस अधीक्षक महोदय, दुर्ग छ.ग., आवेदक/ शिकायतकर्ता बालकृष्ण बोरघाटे उम्र 87 वर्ष आ. स्व श्री मोतीराम बोरघाटे निवासी 24/18, नेहरू नगर (पूर्व) भिलाई, जिला दुर्ग छ.ग. द्वारा नियुक्त आम मुख्त्यार दामाद एन.के.सुरेश पता मकान नंबर 7/बी, सडक नंबर 04, सेक्टर 02, भिलाई तह.व जिला दुर्ग, छ.ग. मोबाईल नंबर 94790-56379, अनावेदक/आरोपी 1. अंबिका प्रसाद देवांगन आ.स्व. द्वारिकानाथ देवांगन पता ग्राम उरला रेल्वे फाटक के बाजू की बस्ती दुर्ग जिला छ.ग....विक्रेता, 2.के.डी. मेश्राम आ. गोवर्धन मेश्राम 3. श्रीमति लक्ष्मी मेश्राम पति केडी.मेश्राम दोनो निवासी नरेन्द्र महेश्वरी के मकान के पीछे सडक नंबर 06 माडल टाउन जुनवानी भिलाई तह.व जिला दुर्ग छ.ग. 4.श्रीमति मनीषा श्रीवास्तव पति चंद्रशेखर श्रीवास्तव पता के.डी.मेश्राम के मकान के पीछे सडक नंबर 07 माडल टाउन जुनवानी भिलाई तह.व जिला दुर्ग छ.ग., क्रेतागण विषय अनावेदक द्वारा भू-स्वामी नहीं होने के बावजूद माडल टाउन, जुनवानी के खसरा नंबर 325/2 का टुकड़ा प्लॉट नंबर 16 आवेदक की भूमि को तीनों लोगों को विक्रय करने की शिकायत एवं उचित कानूनी कार्यवाही शिघ्र करने बाबत। महोदय जी, निम्न प्रार्थना है कि:- 1. यह कि आवेदक दिनांक 10.03.1969 को माडल टाउन जुनवानी में स्थित खसरा नंबर-325/2 का टुकड़ा, 2700 वर्गफुट प्लॉट नंबर-16 लक्ष्मण दास, जगन्नाथ हेडउ से पंजीकृत बैनामे के अनुसार क्रय किया था उक्त भूमि की चर्तुसीमा को चिन्हांकित कर पत्थर का घेरा लगाकर अपने कब्जे में रखा था । 2.यह कि आवेदक जब भूमि पर घर बनाना चाहा तब उसे ज्ञात हुआ कि उस भूमि पर दूसरे लोग काबिज है । 3.यह कि आवेदक ने जिससे भूमि क्रय किया था लक्ष्मण जगन्नाथ से सन 1954 में चतेराम गनेश से 2.0 रकबा खसरा नंबर 325/2 क्रय कर संलग्न कच्चा ले आउट के आधार से कुछ टुकड़े कर व्यक्तियों को विक्रय किया था, उसी में से एक टुकड़ा प्लॉट नंबर-16 मैने क्रय किया था । 4.यह कि आवेदक की भूमि का रिकार्ड अधतन राजस्व विभाग में नहीं है इस बात की जानकारी आरोपी क्रमांक 01 एवं अन्य को मालूम होते ही मिलकर जालसाजी करके अपने कब्जे में कर लिये है और उसक अनावेदक क्र.02 से 04 को फर्जी रजिस्ट्री करके बेच दिया है इसलिए क्र 02 से 04 अनावेदक है । 5.यह कि आरोपियो को पूरी जानकारी थी कि सन 2008 के पहले से उक्त भूमि का रिकार्ड सुधार हेतु प्रकरण तहसीलदार कार्यालय में लंबित है, क्यो कि आरोपियो द्वारा संबंधित सभी न्यायालय को यह जानकारी दिये कि आवेदक का प्रकरण 2008 मे एक बार खारिज हुआ है इसलिये पुनः उनके सुनवाई नहीं होनी चाहिये लेकिन सभी न्यायालय द्वारा आरोपियो के दलील को खारिज कर गये है और

लगातार खारिज होकर वे हारते रहे हैं और केश को उलझाने के लिये अपील करके उलझाये हुये हैं । 6.यह कि जब आरोपियों को यह ज्ञात था कि आवेदक की कथित भूमि का कोई प्रकरण न्यायालय सन 2008 के पहले लंबित है तो क्यों मिलजुलकर जालसाजी करके सन 2009 एवं 2010 में जबरदस्ती फर्जी कब्जा करके उसे 03 प्लॉट बनाकर फर्जी विक्रय करने की घटना को अंजाम दिये हैं । 7.यह कि आरोपी अंबिका प्रसाद देवांगन अधतन जमीन के कई मामलों में हेराफेरी में पूर्व से लिप्त हैं सुपेला थाने में भी इसके खिलाफ जांच लंबित है, क्यों कि बंदोबस्त पूर्व के कई खसरा नंबरों का एक नया नंबर 1084 बनने के कारण जबकि पुराना खसरा नंबर 325/2 में कभी भी आरोपी की भूमि नहीं होने के बाद भी साठ गांठ कर जालसाजी करने में कामयाब हो गया है और अनावेदक क्रमांक 02 से 04 को बेचा है, भू-स्वामी नहीं होने के बावजूद अवैध तरिके से बिक्री (रजिस्ट्री) किया है उक्त तीन रजिस्ट्री सत्य प्रतिलिपि की फोटो कापी संलग्न हैं।....."

9. It has been further contended that the contention raised by the petitioner cannot be adjudicated while exercising the power under Section 482 of the Cr.P.C. as it is disputed facts that authenticity of the offence can be examined by the learned trial Court while recording of the evidence, therefore, the case of the petitioner does not fall within category where this Court under Section 482 of the Cr.P.C. or under Article 226 of the Constitution of India can interfere in the proceeding related to cognizable offence.
10. During pendency of the petition, the petitioner filed amendment application for amendment in the petition pleading that the Special Crime Investigation Unit, Durg Range, Durg vide letter dated 15.12.2017 addressed to Superintendent of Police, Durg after enquiry wrote that on enquiry it is found that it is a case of Revenue Department and no cognizable offence has been committed how Station House Officer, Supela, Durg has registered the FIR, therefore, the registration of FIR is against the judgment passed by Hon'ble the Supreme Court in **Awadhesh Kumar Jha &**

others Vs. State of Bihar¹. On due consideration, the said amendment application was allowed by this Court.

11. The learned counsel for respondent No. 2 would submit that after submission of report by Special Crime Investigation Unit, Durg Range, Durg on 15.12.2017, the petitioner submitted another complaint to the Superintendent of Police, Durg on 20.12.2017 wherein, he has mentioned that due to some mistake committed by investigating officer, the FIR has not been registered, which has been rectified by registration of FIR by Police Station- Supela, thus, it cannot be said that it is the second FIR.
12. I have heard learned counsel for the parties and perused the documents annexed with the petition with utmost satisfaction.
13. The contention of learned counsel for the petitioner with regard to spot inspection report, demarcation report, Khasra Panchnama of Village- Junwani, Khasra entries are matter of enquiry and the entire correction of entry by deleting name of Daulat Ram as per order dated 30.07.2011 and Khasra entry dated 22.01.2018 are subject matter to be enquired by the trial Court and these are the defence of the petitioner, which cannot be examined by this Court while hearing the case under Section 482 of the Cr.P.C.
14. From bare perusal of the contention raised by the petitioner, it is quite clear that there are disputed facts related to correctness of the documents and description of the property is involved, which cannot be examined by this Court at this stage. The judgment cited by learned counsel for the petitioner in **Awadhesh Kumar Jha (Supra)** is not applicable to the facts and circumstances of the present case as it is well settled by Hon'ble the Supreme Court that closure report cannot be construed as an information report. It is report on the investigation and it is not an information of cognizable offence as defined under Section 154 of the Cr.P.C. Criminal law will come in motion when the FIR has been registered.

1 (2016) 3 SCC 8

Section 154 of Cr.P.C. deals with information to police in cognizable cases. Section 154 of the Cr.P.C. is extracted below:-

“154. Information in cognizable cases.- (1)

Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.”

15. Since, FIR has already been registered, therefore, it cannot be said that on the basis of complaint made by respondent No. 2, registration of offence can be said to be second FIR, therefore, the judgment cited by learned counsel for the petitioner is not applicable to the present case.
16. Hon'ble the Supreme Court in **Kaptan Singh Vs. The State of Uttar Pradesh & others**², has held as under:-

“9.1 At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 Cr.P.C. has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 Cr.P.C.

² Criminal Appeal No. 787 of 2021 (decided on 13.08.2021)

quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the Learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 Cr.P.C. was at the stage of FIR in that case the allegations in the FIR/Complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in the case of **Dineshbhai Chandubhai Patel** (Supra) in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

9.2 In the case of **Dhruvaram Murlidhar Sonar** (Supra) after considering the decisions of this Court in **Bhajan Lal** (Supra), it is held by this Court that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C. Similar view has been expressed by this Court in the case of **Arvind Khanna** (Supra), **Managipet** (Supra) and in the case of **XYZ** (Supra), referred to hereinabove.

9.3 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C.

10. The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation. The High Court has failed to appreciate and consider the fact that the document i.e. a joint notarized affidavit of Mamta Gupta – Accused No.2 and Munni Devi under which according to Accused no.2 - Ms. Mamta Gupta, Rs.25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered agreement to sell dated 27.10.2010, the sale consideration is stated to be Rs.25 lakhs and with no reference to payment of Rs.25 lakhs to Ms. Munni Devi and no reference to handing over the possession. However, in the joint notarized affidavit of the same date i.e., 27.10.2010 sale consideration is stated to be Rs.35 lakhs out of which Rs.25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused No.2. Whether Rs.25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said document and payment of Rs.25 lakhs as mentioned in the joint notarized affidavit dated 27.10.2010. It is also required to be considered

that the first agreement to sell in which Rs.25 lakhs is stated to be sale consideration and there is reference to the payment of Rs.10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered at the time of trial. The High Court has failed to notice and/or consider the material collected during the investigation.”

17. Honble the Supreme Court in case of **Priti Saraf & another Vs. State of NCT of Delhi & another**³, held as under:-

“31. Be it noted that in the matter of exercise of inherent power by the High Court, the only requirement is to see whether continuance of the proceedings would be a total abuse of the process of the Court. The Criminal Procedure Code contains a detailed procedure for investigation, framing of charge and trial, and in the event when the High Court is desirous of putting a halt to the known procedure of law, it must use proper circumspection with great care and caution to interfere in the complaint/FIR/charge-sheet in exercise of its inherent jurisdiction.

32. In the instant case, on a careful reading of the complaint/FIR/charge-sheet, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 406 and 420 IPC cannot be said to be absent on the basis of the allegations in the complaint/FIR/ charge-sheet. We would like to add that whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial. Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court for exercising inherent powers of the High Court under Section 482 CrPC for quashing such proceedings.”

18. In view of the above, there is no illegality or irregularity in the registration of FIR and the subsequent submission of final report by the Police, therefore, the petitioner is not entitled to get any relief from this Court at this stage.

³ AIR 2021 Supreme Court 1531

19. In view of foregoing discussion as well as the judgment rendered by Hon'ble the Supreme Court, the present petition is liable to be and is hereby dismissed. However, it is made clear that this Court has not expressed anything on merits of this case and facts have been considered for deciding the present petition only. The trial Court is directed to proceed further in accordance with law and should make an endeavor to conclude the trial within a period of two years from the date of receipt of copy of this Court without being influenced from any of the observation made by this Court while deciding this petition.

Sd/-
(Narendra Kumar Vyas)
Judge

Arun