

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 694 of 2020****Judgment reserved on 05.04.2021****Judgment delivered on 15.06.2021**

State of Chhattisgarh, Through The District Magistrate, Bemetara, District -
Bemetara Chhattisgarh.

---- Applicant**Versus**

1. Milan Singh, S/o Mukul Mahettar, Aged About 60 Years, R/o Village Murmunda, Police Station-Nandini, District-Durg, Chhattisgarh
2. Atmaram Sahu, S/o Brijlal Sahu, Aged About 55 Years, R/o Village Latabod, Police Station Balod, District-Balod, Chhattisgarh

---- Respondents

For Applicant/ State :	Shri Adil Minhaj, G.A.
For the Respondents:	Shri Amit Kumar Sahu, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV Order**

1. This criminal revision has been brought being aggrieved by the judgment dated 28.11.2019 passed in Criminal Appeal No.66/2018 by the Additional Sessions Judge, Bemetara thereby allowing the appeal against conviction and acquitting the respondents from all the charges framed against them.
2. Facts of the case, in brief, are that complainant Shailendra Kumar Nayak (PW-1) is the recorded owner of land bearing khasra No.302 area 0.54 hectare situated in village Khudmuda, District Durg. Fraudulent sale-deed of this land was executed by respondent No.1 presenting himself as owner of the land above mentioned, on the basis of fraudulent revenue documents, which were provided by the respondent No.2, who was Patwari of that circle. This fraudulent sale-deed was executed in favor of Smt. Janki Bai PW-3.

3. Written complaint Ex.P-1 was made by Shailendra Kumar Nayak based on which FIR was registered, case was investigated and charge-sheet was filed against the respondents. The learned trial Court framed charges under Section 420, 465, 467, 468, 471 r/w Section 34 of IPC against respondents. On completion of trial, the judgment dated 31.7.2018 was delivered convicting both the respondents for commission of offence under Sections 420, 464, 468, 471, 34 of IPC and sentencing each of them to undergo rigorous imprisonment of one year with fine of Rs.500/- for each offence. Appeal preferred has been allowed vide impugned order and the respondents have been acquitted.
4. Learned State Counsel appearing for the applicant submits that the impugned judgment of acquittal in favor of the respondents is totally erroneous, illegal and incorrect. There had been clear evidence present that the respondent No.1 was not the owner of the property which was sold by him, as he presented himself as owner on the basis of forged revenue documents copies, which were provided by the respondent No.2. The witnesses of prosecution have very clearly supported the prosecution case even the purchaser of land in the said fraudulent sale has supported the prosecution case, therefore, the impugned judgment of acquittal against the respondent is totally perverse and is liable to be set aside. Therefore, the impugned judgment may be set aside and the judgment of conviction by the trial Court may be restored.
5. Learned counsel for respondents opposes the submissions made in this respect. It is submitted that the respondent No.1, who worked as a sweeper, was given disputed land for cultivation by the ancestors of complainant Shailendra Kumar Nayak, who had been *Malgujar* in the old times, and he was in possession continuously. Therefore, it is a case of long possession of the respondent No.1 on the basis of which he has acquired title over the disputed land and on this basis he was entitled to execute sale-deed. It is submitted that the learned appellate Court has not committed any error in acquitting the respondents in the impugned judgment, hence, the revision petition be dismissed.

6. I have heard both the parties and perused the documents on record.
7. The learned appellate Court has considered on the statement of complainant Shailendra Kumar Nayak PW-1 in cross-examination that respondent No.1 used to work as Sweeper for his ancestors, therefore, he was given disputed land for earning livelihood. It has been observed in the impugned judgment that after the enactment of the C.G. Land Revenue Code, 1959, the tenants and other persons in possession have acquired title over such properties in their possession. It was also observed that the document that were in favor of the respondents were not exhibited and proved by the prosecution and that there is no evidence to show as to who is the person, who has done forgery in the documents. On this basis it was held that prosecution against the respondents is full of doubts and the respondents were acquitted.
8. The documentary evidence present in the records includes the sale-deed Ex.P-4 which has been proved by Janki Bai PW-3 that it was executed by respondent No.1 and the same has not been disputed by the respondents. Therefore, it is clearly established that the sale-deed Ex.P-4 with respect to the disputed property was executed in favor of Janki Bai PW-3 by respondent No.1 claiming himself to be the title holder of that property. Allegation of the prosecution is that respondent No.1 presented himself as the owner of the property on the basis of the forged revenue documents. The documents that have been produced and exhibited are Rin Pustika (Article A-1), which is in the name of complainant Shailendra Kumar Nayak; copy of record of rights Ex.P-6C and khasra Panchsala (ExP-7C), which display name of Manmohan Lal as the title holder and in possession of the property in dispute i.e. land bearing Khasra No.302 area 0.54 hectare. Manmohan Lal is the father of the complainant. No other document has been presented and proved by the prosecution to show as to on what basis respondent No.1 presented himself as the owner of the property in dispute. Neither is there any document or evidence present to show that respondent No.2 has acted in aid of respondent No.1 by preparing any forged document for his benefit. There are oral statements of the witnesses that documents were forged, but such oral statements are not

sufficient to prove the allegation of forgery. There is specific requirement of the prosecution to produce forged documents and prove the forgery by bringing evidence in that respect, which is totally absent in this case.

9. According to the defence, respondent No.1 had entitlement and on that basis he had executed the sale-deed. There are admissions made by witnesses namely Shailendra Kumar Nayak PW-1, Sujeet Kumar PW-2, Janki Bai PW-3, Sarika PW-4 and Sahdev PW-6 that the land in question was given to the respondent No.1 in lieu of his services as Sweeper by the then Malgujars, who were ancestors of the complainant. It is clear that respondent No.1 was not the recorded owner of the land, but for the reason that he was continuing in possession of that land and with the belief that said land has been granted to him as *Inam* of his services, he made preposition to transfer the same to Janki Bai PW-3 and executed the sale-deed.
10. It is the admission of Shailendra Kumar Nayak PW-1 in cross-examination, that respondent No.1 was continuously in the possession of the disputed land and the objection was raised only after the sale-deed was executed. Therefore, it appears to be a case covered under the general exception of Indian Penal Code. It is a case of mistake of fact on the part of respondent No.1, however, he had no entitlement under the law to make such transfer, therefore, this act of respondent No.1 cannot be said to be governed by Sections 76 & 79 of IPC. Hence, the execution of sale-deed has been made on the basis of erroneous belief of respondent No.1 that he is person entitled to make such transfer of land. Adding to the evidence present, the land sold by this sale deed has not been occupied by the purchaser Janki Bai (PW-3) and it is the complainant who is in possession.
11. The word 'cheating' has been defined under Section 415 of the IPC which says that whoever fraudulently or dishonestly induces any person to deliver any property to any person. In this case, no inducement was given to the complainant by respondent No.1 to deliver any property as the disputed property was already in possession of respondent No.1. Therefore, the act of respondent No.1 does not come within the definition of 'cheating' as defined under Section 415 of IPC. The

charge of forgery has to be proved by producing and proving forged document. In the present case, no such documentary evidence is presented and proved by the prosecution. Thus, the prosecution failed to prove the charge under Sections 467, 468 & 471 of IPC. Therefore, conviction of respondents for these offences by the trial Court was totally erroneous. There was no charge of misappropriation of disputed property against the respondents, which could have been the case because the disputed property was entrusted to respondent No.1, who misappropriated the same. According to the evidence brought on record, none of the charges against the respondents has been found established, therefore, acquittal of respondents by the appellate Court, does not suffer from any infirmity or illegality. Hence, this revision has no substance and the same is liable to be dismissed.

12. Consequently, the revision petition stands dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge