AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRMP No. 2360 of 2019

Order reserved on 27/01/2021

Order delivered on 16/02/2021

1. Nishant Agrawal S/o Ved Prakash Agrawal, Aged about 40 years, R/o Jawahar Nagar Ambedkar Chowk Ambikapur, Distt. Surguja, Chhattisgarh.
2. Jatin Bhausar S/o Devendra Kumar, Aged about 34 years, R/o B-312, Shri Krishna Tower National Highway 8, Krishnangar Ahmedabad, P.S. Ahmadabad, Distt. Ahmadabad, Gujarat, Occupation Director.

---Petitioners

Versus

1. State of Chhattisgarh, Through the Superintendent of Police Batouli, Distt. Surguja, Chhattisgarh.
2. Station House Officer, Police Station Batauli, Distt. Surguja, Chhattisgarh.

--- Respondents

For Petitioners :- Mr. Dev Ashish Biswas, Advocate

For State :- Mr. Jitendra Pali, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The two petitioners herein seek quashment of FIR dated 07/12/2012 in Crime No. 178/2017 registered at Police Station Batauli, Distt. Surguja for offences punishable under Sections

420, 467, 468, 471 read with Section 34 of the IPC and Section 120B of the IPC and Sections 3(1)(च)(छ), 3(2)(v)(क) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The challenge in the instant petition has been made on the following factual backdrop :-

2.1. That, Gaya Prasad S/o Vishwanath, Balgovind S/o Shobhnath and Satyanarayan S/o Shobhnath through their power of attorney holder namely Vinay Kumar Soni executed two sale deeds dated 16/09/2010 in favour of Sanjeev Sharma, Deputy General Manager, Ultratech Cement Ltd thereby, transferring the subject land in his favour on the premise that they are the title-holders of the subject land and they are competent to alienate the said subject land and in which the present two petitioners stood as witnesses by attesting the sale deeds.

2.2. Subsequently, complaint was made to the Collector that the said land was not owned by the sellers named above and it is Government land/land held by ab-original tribes, which could not have been sold without the permission

of the Collector under Sections 165(6) & 165(7-b) of the Chhattisgarh Land Revenue Code, 1959 (hereinafter, 'the Land Revenue Code') and it further could not have been registered by the Sub-Registrar in view of the express bar contained in Section 165(10) of the Land Revenue Code.

2.3. Accordingly, the Collector, Sarguja initiated revenue proceedings and by order dated 26/11/2012 held that the transaction made on the strength of the aforesaid two sale deeds are null and void and it does not confer any title upon the purchaser namely Sanjeev Sharma, Deputy General Manager, Ultratech Cement Ltd. It was also held that the said sale deeds could not have been registered and further held that the petitioners, who stood as attesting witnesses during the execution of the sale deeds, are also responsible for registration of those sale deeds, and directed the Sub-Divisional Officer, Sarguja to lodge an FIR against the purchaser therein as well as the petitioners along with the sellers, pursuant to which an FIR has been lodged and the petitioners too have been charged with the

aforesaid offences which has been called in question in the instant petition filed under Section 482 of CrPC.

3. Mr. Dev Ashish Biswas, learned counsel for the petitioners, would submit that the petitioners merely stood as attesting witnesses during the execution of the two sale deeds dated 16/09/2010 and as such, they cannot be held responsible for commission of the aforesaid offences as they have simply attested the signatures of the sellers mentioned in the sale deeds and that would not attract any criminal liability. He would rely upon the decisions rendered by the Privy Council in the matters of **Banga Chandra Dhur Biswas v. Jagat Kishore Acharjya Chowdhuri**[1] and **Pandurang Krishnaji v. M. Tukaram**[2] to buttress his submission that the attestation of a deed by itself estops a man from denying nothing whatsoever except that he has witnessed the execution of the deed or that he knew of its contents or that he consented to the transaction which the document effects and as such, merely on the basis of the attestation of the sale deeds, no criminal liability can be

1 AIR 1916 Privy Council 110
2 AIR 1922 Privy Council 20

fastened upon the petitioners. He would further submit no offences are made out against the petitioners and prosecution against the petitioners is nothing but sheer abuse of the process of the Court, therefore, the FIR lodged against the petitioners deserves to be quashed.

4. Mr. Jitendra Pali, learned Deputy Advocate General for the respondents/State, would submit that though the petitioners stood as witnesses during the execution of the sale deeds, but the aforesaid offences have been registered against them including offence under Section 120-B of IPC which provides for punishment for criminal conspiracy, therefore, petitioners are required to face the trial and the fact that they were not involved in any criminal conspiracy can be proved during the course of the trial and at this stage, it cannot be held that no offence is made out against them, as such, the instant petition deserves to be dismissed.

5. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

6. At the outset, it would be appropriate to notice the decision rendered by the Supreme Court in the matter of **State of Haryana v. Bhajan Lal**[3] in which Their Lordships of the Supreme Court have laid down the principle of law for exercise of extraordinary jurisdiction under Article 226 of the Constitution of India and/or inherent power under Section 482 of CrPC and have laid down the categories of cases by way of illustration wherein the said power can be exercised by this Court either to prevent abuse of the process of the Court or otherwise to secure the ends of justice. Paragraph 102 of the judgment states as under :-

> "102. In the backdrop of the interpretation of the vaioud relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myraid kinds of cases wherein such power should be exercised.

3 1992 Supp. (1) SCC 335

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do no prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5). Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6). Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7). Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with

a view to spite him due to private and personal grudge."

7. The decision rendered by the Supreme Court in Bhajan Lal (supra) has been followed by Their Lordships of the Supreme Court from time to time including in the matter of **Hridya Ranjan Prasad Verma v. State of Bihar**[4] wherein principally the offence punishable under Sections 420 and 415 of the IPC has been registered against the accused persons.

8. Section 420 of the IPC defines cheating and dishonestly inducing delivery of property which states as under :-

> "**420. Cheating and dishonestly inducing delivery of property. -** Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

9. Section 415 of the IPC defines cheating which states 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

4 (2000) 4 SCC 168

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

10. The aforesaid provision which defines cheating requires -

(1). deception of any person;

(2). (a) fraudulently or dishonestly inducing that person

(i) to deliver any property to any person, or

(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or commission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

11. The Supreme Court in the matter of **Hridaya Ranjan** (supra) has held that there are two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or

dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class or cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest. Paragraph 15 of the report states as under :-

> "15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. IT depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

12. The question for consideration would be whether ingredients of offence under Section 420 of IPC

i.e. cheating is available against the petitioners in the facts of the case.

13. Admittedly, both the petitioners stood as attesting witness to those two sale deeds 16/09/2010 executed by Gaya Prasad, Balgovind and Satyanarayan through their power of attorney holder namely Vinay Kumar Soni in favour of Sanjeev Sharma, Deputy General Manager, Ultratech Cement Ltd and both the sale deeds have been declared null and void by order dated 26/11/2012 passed by the Collector in view of the fact that the said land was owned by Government/ab-original tribe and it could not have been sold without the previous permission of the Collector under Sections 165(6) and 165(7-b) of the Chhattisgarh Land Revenue Code and further it could not have been registered by virtue of the provisions contained in Section 165(10). While declaring the sale deeds as null and void, the Collector vide order dated 26/11/2012 directed as under :-

> "प्रकरण में आये तथ्यों एवं उपरोक्त विवेचना के आधार पर पाया जाता है कि ग्राम बैजनाथपुर, तह. बतौली, जिला - सरगुजा स्थित प्रश्नाधीन भूमि जो बिंदु क्र. 1 में अंकित किया गया है तथा आज भी शासकीय भूमि है अनावेदक क्र. 2, 3 एवं 4 द्वारा राजस्व विभाग के कर्मचारियों की अवैधानिक रूप से मिली भगत करते हुए उसे सर्वप्रथम हड़पा गया तथा अनैतिक रूप से आर्थिक लाभ प्राप्त करते हुए उसे अनावेदक क्र. 1 को पंजीबद्ध बिक्रय - पत्र द्वारा

बिक्री भी कर दिया गया | यहां यह बिंदु अति महत्वपूर्ण है की अनावेदक क्र. 2, 3 एवं 4 द्वारा शासकीय भूमि जिस पर भरी संख्या में पेड़ खड़े हैं, को बिना हिचक तथा बिना किसी भय के राजस्व अभिलेखों के साथ खिलवाड़ करते हुए अपने नाम कर अंकित कराया गया है तथा इसके बदले में प्रतिफल के रूप में बड़ी राशि भी प्राप्त कर लिया गया है | अनावेदक क्र. 2, 3 एवं 4, उनके मुख्तियार आम विनय शंकर सोनी आ. श्री बैजूराम सोनी, निवासी नवापारा चर्च रोड के पास अंबिकापुर, दोनों विक्रय पत्र के गवाह सर्व श्री निशांत अग्रवाल आ. वेदप्रकाश अग्रवाल निवासी जवाहर नगर अंबिकापुर तथा जतीन भासर आ. देवेंद्र कुमार निवासी आनंद नगर मनेन्द्रगढ़ रोड अंबिकापुर का यह कृत्या विधि विरुद्ध तथा निश्चित रूप से दंडनीय है | उसी प्रकार प्रश्नाधीन भूमि को क्रय करने वाले अनावेदक क्र. 1 का भी कृत्या विधि विपरीत एवं दंडनीय है, क्योंकि क्रेता की भी उतनी जिम्मेवारी रहती है कि विक्रेता जिस भूमि को विक्री कर रहा है वह भूमि क्रय करने योग्य है अथवा नहीं तथा ऐसी भूमि का प्रतिफल बिक्रेता को दिया जा सकता है अथवा नहीं |

Thereafter, finally the Collector directed to lodge FIR by holding as under :-

जैसा कि उपर वर्णित है उपरोक्त अनियमित कृत्या के लिए विक्रेतागण अनावेदक क्रमांक 2 गया प्रसाद आ. विश्वनाथ, अनावेदक क्रमांक 3 बालगोविंद आ. शोभनाथ, अनावेदक क्रमांक - 4 सत्यनारायण आ. शोभनाथ, तीनो अनावेदकों के मुख्त्यार आम विजय शंकर सोनी आ. स्वर्गीय बैजूराम सोनी, निवासी नवापारा, चर्च रोड के पास अंबिकापुर, दोनों विक्रय पत्र के गवाह द्वय निशांत अग्रवाल आ. वेदप्रकाश अग्रवाल निवासी जवाहर नगर अंबिकापुर तथा जतीन भौसार आ. देवेंद्र कुमार निवासी आनंद नगर मनेन्द्रगढ़ रोड, अंबिकापुर तथा क्रेता अनावेदक क्रमांक - 1 संजीव शर्मा आ. शिवराज शर्मा पूर्ण रूप से दोषी हैं, इस लिए अनुविभागीय अधिकारी, सीतापुर इनके विरुद्ध सम्बंधित पुलिस थाना में अविलम्भ प्राथमिकी दर्ज कराएं| अनावेदक क्रमांक - 1 जो कोल ब्लॉक के लिए उक्त भूमि क्रय किया था इस भूमि से कोई लाभ प्राप्त न करे, सचिव, छत्तीसगढ़ शासन, खनिज संसाधन विभाग मंत्रालय रायपुर को भी पृथक से लिखा जाए | ”

14. On the basis of the aforesaid order/direction passed by the Collector, Sarguja, the above-stated offences have been registered against the petitioners and they are being prosecuted for the offences as noticed herein-above. It is the case of the prosecution that the petitioners have attested the two sale deeds as witnesses and as such, the aforesaid offences have rightly been registered against them along

with the sellers and the purchaser of the subject sale deeds.

15. At this stage, it would be appropriate to notice Section 3 of the Transfer of Property Act, 1882 which defines the word “attested”, which states as under :-

> ““attested”, in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary;”

16. A careful reading of the aforesaid definition of the word “attested” would show that the essential conditions of a valid attestation under Section 3 of the Transfer of Property Act are :

(i) two or more witnesses have seen the executant sign the instrument of have received from him a personal acknowledgement of his signature;

(ii) with a view to attest or to bear witness to this fact each of them has signed the instrument in the presence of the executant.

It is essential that the witness should have put his signature *animo attestandi*, that is, for the purpose of attesting that he has seen the executant sign or has received from him a personal acknowledgement of his signature.

17. The Supreme Court in the matter of **M.L. Abdul Jabbar Sahib v. M.V. Venkata Sastri & Sons**[5] while considering the definition of the word "attested" as provided under Section 3 of the Transfer of Property Act has held that to attest is to bear witness to a fact and if a person puts his signature on the document for some other purpose, e.g. to certify that he is a scribe or an identifier or a registering officer, he is not an attesting witness.

18. In the matter of **Banga Chandra** (supra), the Privy Council has held that attestation by itself would neither create estoppel nor imply consent. It proves no more than that the signature of an executing party has been

5 1969 (1) SCC 573

attached to a document in the presence of a witness.

19. Similarly, in the matter of **Pandurang Krishnaji** (supra), it has been held by the Privy Council that attestation of a deed by itself estops a man from denying nothing whatsoever expecting that he has witnessed the execution of the deed. It conveys, neither directly nor by implication, any knowledge of the contents of the document and it ought not to be put forward alone for the purpose of establishing that a man consented to the transaction which the document effects.

20. The Lahore High Court in the matter of **L. Suraj Bhan v. Hafiz Abdul Khaliq**[6] has held that recitals in a deed do not bind the attesting witnesses, for, an attestation pure and simple is not enough to fix, the attestator with a knowledge of the contents of the deed.

21. Likewise, in the matter of **Surjeet Singh v. State of U.P.**[7] the Allahabad High Court has held that recitals in a deed do not bind the attesting witnesses and thereafter quashed the proceedings against the attesting witnesses.

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6 AIR 1944 Lah 1
7 Manu/UP/1198/2013

Similar is the decision rendered by that High Court in the matter of **Suraya Bali v. State of U.P**[8].

22. In the matter of **M. Srikanth v. State of A.P.**[9] the Telangana High Court quashed the prosecution of the petitioners therein (A-7 and A-8) who were attestors of the lease deed relying upon the decision of the Supreme Court in the matter of **M.L. Abdul Jabbar Sahib** (supra) by holding as under :-

> "8. So far as A.7 & A.8 concerned they are mere attestors of the lease deeds or sub lease deeds of the year 2008 & 2009 executed by A.1 in favour of A.4 and in turn by A.4 in favour of A.5. It is their contention of they have no knowledge of the contents and they have no knowledge of the transactions of source of title of A.1 and claim with reference to will dated 02.04.1950 and deed of confirmation dated 08.03.1990. The law is fairly settled at least from the 3 Judge expression of the Apex Court in M.L. Abdul Jabhar Sahib (supra) that attestation no way fixing attesting witness with knowledge of contents of the document or implying consent for contents of of documents, unless it is established by any independent evidence that to the signature was attached the express condition that it was intended to convey something more than mere witnessing to the execution or attestation. The attestation mainly to mean executing, signing or affixing in the presence of 2 or more witnesses each of whom has seen the executant signing and vice versa and not necessarily more than one of such

8 Criminal Revision No. 3136/2014 decided on 17/02/2017
9 2017 SCC Online Hyd 614

witness shall present and no particular form of attestation is necessary. From the private complaint averments so far as A.7 and A.8 concerned, there is nothing specifically mentioned of their active role either in committing any offence of cheating or forgery or forgery for purpose of cheating or using as genuine a forged document or the like. Having regard to the above, even on the face value of complaint averments, there is no any offence made out against A.7 & A.8 therefrom of mere attestation in view of the settled position of law, for nothing to presume any knowledge of them to the contents of the documents leave apart from no duty caste upon them to verify genuineness of source of title of executant of the document for their attesting.

a). Thus, the proceedings of crime No. 311 of 2010 in so far as A.7 & A.8 are liable to be quashed and accordingly, quashed by allowing the Crl.P. No. 6047 of 2013.

b). Though it is the contention of A.9 that he is also placed in same position from attestation of the sub lease dated 30.01.2009, it requires further discussion in considering any further role of A.9., so also of A.6 being the employees of the entity-A.5, for the sub lease is in favour of A.5 executed by A.4 the lessee from A.1."

23. The decision rendered by the Telangana High Court in the matter of **M. Srikanth** (supra) was taken to the Supreme Court by accused No. 4 against whom the proceeding was not quashed. The Supreme Court took up the matter of **M. Srikanth v. State of Telangana**[10] and quashed the proceeding against accused No. 4 also and

10 (2019) 10 SCC 373

upheld the order quashing the proceeding against the attesting witnesses in paragraphs 27 and 28, which state as under :-

> "27. Insofar as the criminal appeals arising out of the special leave petitions filed by the original complainant is concerned, we absolutely find no merit in the appeals. The learned single Judge has rightly found that there was no material to proceed against accused No. 5 — HPCL and its officers accused Nos. 6 and 9 as also accused Nos. 7 and 8, who have been roped in, only because they were the attesting witnesses. The learned single Judge has rightly exercised his jurisdiction under Section 482 of the Cr.P.C.
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> 28. Insofar as original accused No. 4 is concerned, we have no hesitation to hold, that his case is covered by categories (1) and (3) carved out by this Court in the case of Bhajan Lal (supra). As already discussed hereinabove, even if the allegations in the complaint are taken on its face value, there is no material to proceed further against accused No. 4. We are of the considered view, that continuation of criminal proceedings against accused No. 4, M. Srikanth, would amount to nothing else but an abuse of process of law. As such, his appeal deserves to be allowed. "

24. Reverting to the facts of the present case in light of the aforesaid legal position noticed herein-above, it is quite vivid that in the instant case the only allegation against the present petitioners is that they stood as witnesses during the execution of the sale deeds dated 16/09/2010 by attesting the sale

deeds executed by Gaya Prasad, Balgovind and Satyanarayan through their power of attorney holder namely Vinay Kumar Soni in favour of Sanjeev Sharma, Deputy General Manager, Ultratech Cement Ltd and they have identified the signatures of the sellers who have executed the sale deeds. In light of the principles of law laid down in the aforesaid judgments (supra), it is held that the petitioners were not obliged to verify the title of the sellers upon the said land and they were further not obliged to see that valid title is being transferred in favour of the purchaser i.e. Sanjeev Sharma and their act of attestation as defined under Section 3 of the Transfer of Property Act did not amount to their consent in the said transfer. Merely because they have attested the sale deeds by which title is said to have been transferred by the sellers namely Gaya Prasad, Balgovind and Satyanarayan in favour of the purchaser namely Sanjeev Sharma, it cannot be held that petitioners committed any kind of fraudulent act for which they are liable to be prosecuted for the aforesaid offences including Section 420 of IPC as it is well settled law that recitals in a deed do not

bind the attesting witnesses and by act of attestation, the attestor cannot be said to have the knowledge of contents of the document in question. It is not the allegation made against the petitioners that they either fraudulently executed the sale deed by impersonating the three sellers for alienating the said land or that they have identified wrong persons as sellers/puchasers, as such, prima facie no case is made out against the present petitioners for prosecuting them for the aforesaid offences including Section 420 and 120B of the IPC and similarly, there is no material available against the petitioners for other offences punishable under Sections 467, 468, 471 read with Section 34 of the IPC and Sections 3(1)(च)(छ), 3(2)(v)(क) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

25. In view of the aforesaid legal analysis, the FIR No. 178/2012 registered at Police Station Batauli, Distt. Surguja against the present petitioners as well as the subsequent proceedings in Special Criminal Case No. 100/2017 (*State of Chhattisgarh v. Sanjeev*

Sharma & Ors.) pending in the Court of Special Judge (Atrocity), Ambikapur are hereby quashed to the extent of present petitioners only. However, the prosecution will continue against the other accused persons in accordance with law. It is made clear that this Court has not expressed any opinion about the merits of the matter qua other accused persons. Their case will be considered on the basis of the record, without being influenced by any observation made herein-above.

26. The instant petition under Section 482 of CrPC is allowed to the extent indicated herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet