IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 2789 of 2024

Atique Eqbal @ Atique Iqbal @ Atik Ikbal, aged about 34 years, s/o Suleman Ansari, resident of Village-Booty, Khijur Tola, Near Zama Masjid, P.O.-Booty, P.S.-Sadar, Dist.-Ranchi

.... Petitioner

Versus

1. The State of Jharkhand
2. Poonam Kumari Mishra, aged about 39 years, w/o Arun Kumar @ Arun Kumar Mishra, resident of Chitragupt Nagar, Ward No. 23, Jhumri Telaiya, P.O.-Jhumari Telaiya, P.S.-Telaiya, Dist.-Koderma

…. Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

…..

For the Petitioner : Mr. Sabyasanchi, Advocate
For the State : Mr. Fahad Allam, Addl. P.P.
For O.P. No.2 : Mr. Anil Kumar Sinha, Advocate
: Mr. Vishnu Kumar, Advocate

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By the Court:-

1. Heard the parties.

2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 528 of B.N.S.S., 2023 with the prayer to quash the entire criminal proceeding including the order dated 03.01.2022 passed by the learned Chief Judicial Magistrate, Ranchi in connection with Complaint Case No. 3095 of 2019 whereby and where under, the learned Chief Judicial Magistrate, Ranchi has found prima *facie case* for the

offences punishable under Sections 323, 341, 420, 467, 468, 471, 120B, 34 of the Indian Penal Code.

3. The allegation against the petitioner is that the co-accused-Gopal Prasad Sinha claiming himself to be the son of Jamuna Prasad Sinha executed a power of attorney in favour of the petitioner in capacity of power of attorney holder of the co-accused; has sold the land, which was earlier sold in favour of the complainant by his vendor; to Uttam Kumar. It is further alleged that the co-accused-Gopal Prasad Sinha claims to be the legal heir of Jamuna Prasad Sinha on the basis of a wrong genealogy.

4. On the basis of the complaint, statement of the complainant on solemn affirmation and the statement of the inquiry witnesses, the learned Chief Judicial Magistrate, Ranchi has found *prima facie* case for the offences punishable under Sections 323, 341, 420, 467, 468, 471, 120B, 34 of the Indian Penal Code and passed the summoning order as already indicated above.

5. It is submitted by the learned counsel for the petitioner by relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Md. Ibrahim & Ors. vs. State of Bihar & Anr.** reported in **(2009) 8 SCC 751**, paragraph no. 23 to 25 of which reads as under:-

> *"**A clarification***
> *23. When we say that execution of a sale deed by a person, purporting to convey a property which is not*

> *his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.*
> *24. The term 'fraud' is not defined in the Code. The dictionary definition of 'fraud' is "deliberate deception, treachery or cheating intended to gain advantage". Section 17 of the Contract Act, 1872 defines 'fraud' with reference to a party to a contract*
> *25. In Dr. Vimla vs. Delhi Administration - AIR 1963 SC 1572, this Court explained the meaning of the expression 'defraud' thus*
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> > *"The expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."*
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> > *The above definition was in essence reiterated in State of UP vs. Ranjit Singh - 1999 (2) SCC 617." (Emphasis supplied)*

that therein, the Hon'ble Supreme Court of India has in no uncertain manner has held that if a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating

but a third party who is not the purchaser under the deed may not be able to make such complaint.

6. It is further submitted by the learned counsel for the petitioner that the complainant is a third party; so far as the transaction between the co-accused-Gopal Prasad Sinha and Uttam Kumar are concerned hence, the complaint at the instance of the complainant is not maintainable.

7. Learned counsel for the petitioner next relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Jit Vinayak Arolkar vs. State of Goa & Ors.** reported in **2025 INSC 31** and submits that in the said judgment, the Hon'ble Supreme Court of India has also approbated and relied upon its own judgment in the case of **Md. Ibrahim & Ors. vs. State of Bihar & Anr.** (**supra**).

8. It is next submitted by the learned counsel for the petitioner by relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Sheila Sebastian vs. R. Jawaharaj & Anr. Etc.** reported in **2018 Supreme (SC) 462** and submits that in paragraph no.29 thereof, in the similar facts of the case, the Hon'ble Supreme Court of India has observed that the penal statute cannot be expanded by using implications and in the absence of any ambiguity in any statute, there is no scope for interpretation, of such statute. It is then submitted by the

learned counsel for the petitioner that the allegations against the petitioner are all false and the petitioner is only the power of attorney holder of the co-accused, who claims himself to be Gopal Prasad Sinha being the son of Jamuna Lal and this case has falsely been foisted, only for wreaking vengeance. It is further submitted by the learned counsel for the petitioner that Uttam Kumar who has purchased the land has no grievance against the petitioner and the property has been mutated in his name. Hence, it is submitted that the prayer as prayed for by the petitioner in this criminal miscellaneous petition be allowed.

9. The learned Addl. P.P. and the learned counsel for the opposite party no.2 on the other hand vehemently oppose the prayer and submits that the co-accused-Gopal Prasad Sinha is impersonating as Gopal Prasad Sinha, son of Jamuna Lal though the co-accused-Gopal Prasad Sinha is not the son of Jamuna Lal. It is further submitted by learned Addl. P.P. and the learned counsel for the opposite party no.2 that the complaint, statement of the complainant on solemn affirmation and the statement of the inquiry witnesses is sufficient to constitute each of the offences in respect of which *prima facie* case has been found by the learned Chief Judicial Magistrate, Ranchi. Learned counsel for the opposite party no.2 further submits that the mutation which was done in the name of

Uttam Kumar has been set aside by the Deputy Commissioner, Ranchi in Mutation Revision Case No. 108R 15/2024-25. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

10. Having heard the submissions made at the Bar and after going through the materials available in the record, it is pertinent to mention here that it is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Md. Ibrahim & Ors. vs. State of Bihar & Anr.** (supra) that a third party to a sale deed cannot maintain a complaint if a person executes a sale deed claiming himself to be the owner of the same, even if such person, is not the owner of the property sold and it is only the purchaser who can maintain such complaint.

11. Now coming to the facts of the case, the undisputed fact remains that the complainant is the third party to the transaction of the sale deed executed by the petitioner in capacity of power of attorney of the co-accused-Gopal Prasad Sinha in favour of Uttam Kumar. It is not in dispute that the co-accused-Gopal Prasad Sinha claims himself to be the owner of the land in question. Therefore, this Court has no hesitation in holding that continuation of the criminal proceeding against the petitioner in respect of sale deed executed by the co-accused- Gopal Prasad

Sinha claiming to the owner of the property in favour of Uttam Kumar through this petitioner being his power of attorney holder; at the instance of the complainant, being the third party to the said transaction, will amount to abuse of process of law and this is a fit case where the entire criminal proceeding including the order dated 03.01.2022 passed by the learned Chief Judicial Magistrate, Ranchi in connection with Complaint Case No.3095 of 2019 be quashed and set aside *qua* the petitioner.

12. Accordingly, the entire criminal proceeding including the order dated 03.01.2022 passed by the learned Chief Judicial Magistrate, Ranchi in connection with Complaint Case No.3095 of 2019 is quashed and set aside *qua* the petitioner.

13. In the result, this Criminal Miscellaneous Petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 29th September, 2026
AFR/Gunjan/-

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