

**(2018) 04 CHH CK 0383**

**Chhattisgarh High Court**

**Case No:** Criminal Misc. Petition No. 264 Of 2014

Reshma Priti

APPELLANT

Vs

Navdeep Singh And Ors

RESPONDENT

**Date of Decision:** April 6, 2018

**Acts Referred:**

- Indian Penal Code, 1860 - Section 120A, 120B, 420, 464, 467, 468, 471
- Code Of Criminal Procedure, 1973 - Section 482
- Chhattisgarh Co-Operative Societies Act, 1960 - Section 70

**Hon'ble Judges:** Sanjay K. Agrawal, J

**Bench:** Single Bench

**Advocate:** T.K. Tiwari, Ravi Kumar Bhagat

**Final Decision:** Allowed

**Judgement**

Sanjay K. Agrawal, J

1. The petitioner by way of this petition under Section 482 of the CrPC seeks quashment of order dated 24-9-2010 passed by the Judicial Magistrate

First Class, Raipur in Criminal Case No.625/2010, whereby complaint case has been registered against the petitioner for the offences punishable under

Sections 120B, 420, 467, 468 and 471 of the IPC.

2. The petitioner was, at the given point of time, member of Sarvoday Grih Nirman Samiti (Maryadit), Raipur (for short, "the Society"), which is

a registered co-operative society in terms of the Chhattisgarh Co-operative Societies Act, 1960. On 20-9-2005, the petitioner applied for allotment of

plot No.36, area 3,300 sq.ft. owned by that Society. At that particular time, registered body of the Society was not in existence and thus Liquidator

was appointed under Section 70 of the Chhattisgarh Co-operative Societies Act, 1960, therefore, the petitioner's application was considered by the

Liquidator of the Society and on 27-9-2005, the Liquidator of the Society allotted plot to the petitioner subject to the condition that advertisement in

respect of ownership of the plot will be published in the newspaper and permission will be obtained from the Registrar, Co-operative Societies and

subject to other conditions, the plot was allotted vide Annexure P-

2. Ultimately, objections were invited on 25-4-2008 vide Annexure P-3 and also it is said that vide Annexure P-1, the Additional Registrar, Co-

operative Societies has directed the Joint Registrar, Co-operative Societies to direct the Liquidator of the Society to proceed in accordance with law

for allotment of vacant plot. Ultimately, on 1-6-2009, the subject land was registered in favour of the petitioner vide Annexure P-4 and sale deed was

registered by the Liquidator in her favour on payment of consideration of ₹ 3,30,000/- and thereafter, it is said that the petitioner came into possession.

3. It appears that thereafter, respondent No.1 herein made a complaint to the police and it was investigated by the Station House Officer, Police

Station Gol Bazaar, Raipur on 19-6-2010 and it was found that the subject land was allotted to Navdeep Singh, respondent No.2 herein, but he did not

make any construction for 17 years and thereafter, the Liquidator of the Society has allotted the subject land to the petitioner after inviting objections

and after payment of consideration amount by the petitioner, as such, no offence is said to have been made out against the petitioner. Thereafter,

complaint was filed on 8-6-2010 for the offences punishable under Sections 420, 467, 468, 471 and 120B of the IPC in which the learned Magistrate

by the impugned order dated 24-9-2010 took cognizance of the offences and directed for issuance of process against the petitioner which has been

called in question in this petition.

4. Notice has been served to respondent No.1 on 24-7-2017, but despite service of notice, no one has entered appeared on behalf of respondent No.1.

5. The State / respondent No.2 has filed return holding that the order passed by the learned Magistrate taking cognizance against the petitioner is in accordance with law.

6. Mr. T.K. Tiwari, learned counsel appearing for the petitioner, would submit that the petitioner is only and only a bona fide purchaser of the subject land and that too allotted by the Society and further, even objections have been invited from all concerned vide Annexure P-3 on 25-4-2008 and the petitioner was allotted plot on 27-9-2005, and after more than four years, on 1-6-2009, the land was registered in her favour. As such, being a bona fide purchaser, the petitioner has purchased land from the vendor for a valid and proper consideration and she is nowhere connected with forgery and fabrication of documents and the police has already investigated the matter and submitted report vide Annexure P-5 on 19-6-2010 that has not been questioned by the complainant and that has become final and therefore the order taking cognizance deserves to be set aside. Mr. Tiwari would rely upon the decision of the Supreme Court in the matter of Mohammed Ibrahim and others v. State of Bihar and another (2009) 8 SCC 751 and the decision of the Madras High Court in the matter of S.S. Janagarajan v. State of Tamil Nadu Criminal Original Petition No.5776/2011 & Misc. Petition No.2/2011, decided on 4-9-2018 to buttress his submission.

7. None present for respondent No.1, despite service of notice.

8. Mr. Ravi Kumar Bhagat, learned Deputy Government Advocate appearing for the State / respondent No.2, would support the impugned order and oppose the petition.

9. I have heard learned counsel for the parties and considered their submissions and also went through the record with utmost circumspection.

10. It is apparent from the perusal of record that the petitioner applied for allotment of subject plot to the Society which was at that time being managed by the Liquidator appointed under Section 70 of the Chhattisgarh Co-operative Societies Act, 1960. Though the Liquidator allotted the subject land to the petitioner on 27-9-2005, but thereafter, the Liquidator has requested the Registrar, Co-operative Societies by letter dated 17-12-2008 to permit him to alienate the subject land which was ultimately disposed of by the Additional Registrar, Co-operative Societies by referring the matter to the Joint Registrar, Co-operative Societies, but it nowhere appears that any action was taken by the Joint Registrar, Co-operative Societies.

However, thereafter, the Liquidator invited objections on 25-4-2008 as it appears and having received no objection, the Liquidator proceeded to register sale deed in favour of the petitioner on 1-6-2009 in which it has clearly been recorded that the petitioner had already paid ₹ 3,30,000/- in favour of the Society and accordingly, the sale deed was registered. Thereafter, dispute arose between the petitioner and the complainant which was also investigated by the Station House Officer, Police Station Gol Bazaar, Raipur who submitted report vide Annexure P-5 dated 19-6-2010 to the Superintendent of Police, Raipur clearly intimating that though mother of respondent No.1 / complainant has purchased the suit land on 3-8-1993, she could not make construction within the stipulated time and for more than 17 years and finding some mismanagement of the Society, Liquidator was appointed and the Liquidator in accordance with law, after inviting objections, sold the subject land in favour of the petitioner for cash consideration and as such, no offence under Section 420 of the IPC is made against the petitioner. Thereafter, complaint case was filed in which cognizance has been taken against the petitioner by the learned Magistrate by the impugned order. As such, it appears that the petitioner is bona fide purchaser of the subject land for a valid consideration in favour of the Society and it is not the case that the petitioner has fabricated any document and cheated either the Society or respondent No.1/complainant or there is no such allegation that the petitioner has got the sale deed executed in her favour by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf.

11. The Supreme Court in Mohammed Ibrahim (supra), considered the issue and defined the condition precedent for offence under Sections 467 and 471 of the IPC and held as under: -

â€œ13. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be

said to have made and executed false documents, in collusion with the other accused.

14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a "false document", if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

15. The sale deeds executed by the first appellant, clearly and obviously do not fall under the second and third categories of "false documents". It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of the complainant's land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person

executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.

12. After having noticed and considered the conditions precedent for offence under Sections 467 and 471 of the IPC, it would be appropriate to notice the condition precedent for offence under Section 468 of the IPC. Section 468 of the IPC which provides forgery for purpose of cheating states as under: -

"468. Forgery for purpose of cheating . Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

13. This penal provision punishes forgery committed for the purpose of cheating. To bring a document within the definition of a forged document, it has first to be shown to be a false document covered under Section 464 of the IPC and even mere proving of making a false document without

establishing the intention of the maker is not sufficient to constitute an offence and unless forgery of a document is proved, it cannot be said that the said forged document is used as genuine one, meaning thereby to constitute an offence under Section 471 of the IPC, first an offence under Section 468 of the IPC has to be established. (See *Kajal Dey v. State of Tripura* 2014 Cri. L.J. 3367.)

14. Similarly, the offence of cheating has been defined under Section 415 of the IPC. In the matter of *V.Y. Jose and another v. State of Gujarat and another* (2009) 3 SCC 78, the Supreme Court has pointed out the ingredients of the offence of cheating as under: -

â€œ14. An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

(i) deception of a person either by making a false or misleading representation or by other action or omission;

(ii) fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code can be said to have been made out.â€

15. Similarly, in the matter of *Hridaya Ranjan Prasad Verma and others v. State of Bihar and another* (2000) 4 SCC 168, the Supreme Court has laid down the conditions precedent for offence under Section 420 of the IPC which are as under: -

â€œ14. On a reading of the section it is manifest that in the definition there are set forth 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 of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

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.â€

16. Section 120B of the IPC provides for punishment of criminal conspiracy and reads as under: -

â€œ120B. Punishment of criminal conspiracy.â€"(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.â€

17. The term â€œcriminal conspiracyâ€ is defined under Section 120A of the IPC as to mean when two or more persons agree to do, or cause to be done, an illegal act, or an act with is not illegal by illegal means. Proviso to Section 120A of the IPC provides that no agreement except an agreement

to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement

in pursuance thereof. Only if the allegations contained in the FIR taken on face value, the ingredients of Section 120A of the IPC are satisfied; the

question of punishment of accused under Section 120B would arise.

18. Reverting to the facts of the case in the light of the aforesaid legal position and the conditions precedent for offences under Sections 420, 467, 468

& 471 of the IPC, it is quite vivid that the document i.e. the sale deed executed by the Liquidator of the Society in favour of the petitioner cannot be

said to be a forged document, rather it is a genuine document executed by the Liquidator after inviting objections from the stakeholders by public

notice dated 25-4-2008 and thereafter, after considerable lapse of time, sale deed was got executed in favour of the petitioner. It is not the allegation

that the document is a forged document or the petitioner has in any way fraudulently or dishonestly caused any person to sign, execute or alter the

document. Execution of document in the shape of sale deed dated 1-6-2009 by the Liquidator of the Society in favour of the petitioner in any way is

not connected with the allegation amounting to commit forgery of document and in fact, the petitioner was the bona fide purchaser and the vendor,

who is Liquidator duly appointed by the Government under Section 70 of the Chhattisgarh Co-operative Societies Act, 1960, executed sale deed in her

favour for a valid consideration. Not only that, the Liquidator has also took reasonable precaution before executing sale deed in favour of the petitioner

by inviting public objection and thus, the petitioner has bona fide purchased the subject property for valid consideration by which it cannot be said that

she has committed any of the offences under Sections 120B, 420, 467, 468 & 471 of the IPC. As such, it is held that the petitioner is bona fide

purchaser and the vendor who was at that time Liquidator of the Society has executed sale deed in favour of the petitioner. Further, execution of sale

deed is not denied and there is no falsification of document which attracts the penal provisions contained in Sections 120B, 420, 467, 468 & 471 of the

IPC. Therefore, the aforesaid offences are not made out against the petitioner. Similarly, there is no iota of allegations as to which offence the

petitioner in consent with any one else, agreed to do, or caused to be done. In plain words, Section 120B of the IPC is wrongly applied. The

parameters laid down for exercising jurisdiction for quashing FIR in paragraph 102 of the decision rendered by the Supreme Court in the matter of

State of Haryana and others v. Bhajan Lal and others 1992 Supp (1) SCC 335 would attract. Consequently, the order taking cognizance against the

petitioner for the aforesaid offences deserves to be and is hereby quashed and the petitioner is acquitted of the said charges. Resultantly, Criminal

Complaint Case No.625/2010 pending against the petitioner in the Court of Judicial Magistrate First Class, Raipur for the offences punishable under

Sections 120B, 420, 467, 468 & 471 of the IPC, is hereby quashed.

19. The petition is allowed to the extent indicated herein-above.