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**(2012) 01 AHC CK 0768**

**Allahabad High Court**

**Case No:** Criminal Misc. Writ Petition No. 24030 of 2011

Premwati

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

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**Date of Decision:** Jan. 13, 2012

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 323, 420, 467, 468, 471

**Hon'ble Judges:** Naheed Ara Moonis, J

**Bench:** Single Bench

**Advocate:** Ajay Kumar Srivastava, for the Appellant;

**Final Decision:** Disposed Of

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### **Judgement**

Hon'ble Naheed Ara Moonis, J.

Supplementary affidavit filed today is taken on record. Heard the learned counsel for the petitioner and the learned AGA.

2. The petitioner is challenging the order dated 15.11.2011, passed by Sessions Judge, Pilibhit in revision no.166 of 2011, whereby the revision preferred against the summoning order dated 9.11.2011 has been rejected in complaint case no.1976 of 2009 and summoned the petitioner along with other accused persons to face the trial under Sections 420, 467, 468, 471, 323, 504, 506 IPC.

3. The opposite party no.2 had filed a complaint before the Chief Judicial Magistrate, Pilibhit, which was registered as complaint case no.2794 of 2008 with the allegation that the accused persons had surreptitiously sold the plot in dispute by impersonation on the basis of fictitious power of attorney.

4. The prosecution case in a nutshell is that a fake power of attorney was prepared by the accused persons and on the basis of which fictitious photographs of other persons were affixed as of complainant and the sale deed was executed in the name of the petitioner. Along with the complaint a copy of power of attorney and sale

deed including other materials were filed and on the basis of statements of the witnesses, the court below arrived at the conclusion that the prima facie offence is made out against the accused persons, hence passed the summoning order against the petitioner as well as other accused persons by order dated 9.11.2011, to face the trial under Sections 420, 467, 468, 471, 323, 504, 506 IPC. The petitioner, aggrieved by the said order preferred a revision before the revisional court, which was dismissed by the revisional court by order dated 15.11.2011.

5. It is contended by the learned counsel for the petitioner, that the petitioner has been falsely implicated in the case. She is a widow lady and has nothing to do with the execution of the sale deed by the other accused persons. She was not aware of about any manipulation in obtaining the power of attorney. The petitioner is the bonafide purchaser of the property in the consideration of twenty five thousand rupees and as such there is no offence committed by her as alleged in the complaint. The court below has committed manifest error in passing the summoning order.

6. Per contra the learned AGA has contended that from bare perusal of the allegation, prima facie offence has been made out against the petitioner. There is no procedural illegality or irregularity in summoning the petitioner, therefore the petition deserves to be dismissed. I have considered the rival submissions of the learned counsels for the parties.

7. From the bare perusal of the record it is evident that the court below has considered the statements of the complainant and witnesses, hence passed the summoning order against the petitioner along with other accused persons. From the allegations made in complaint and after considering the arguments made at the bar, it cannot be said that no offence has been made out against the petitioner. The summoning order has been passed after recording the statements of the complainant and the witnesses. At the stage of issuing process, the court below is not expected to examine and assess in detail the material placed on record, only this has to be seen whether prima facie cognizable offence is disclosed or not. At this stage only prima facie offence is to be seen. The petitioner has alternative remedy to raise her defence at the appropriate stage by filing discharge application which shall be considered by the court below in accordance with law. The orders passed by the two courts below are perfectly justified. It is not warranted to interfere with the orders passed by the two courts below, and as such the prayer for quashing is refused. This petition lacks merit and is accordingly dismissed.

8. However, the petitioner is directed to appear and surrender before the court concerned and apply for bail within thirty days from today and the same shall be considered and disposed of, if possible on the same day, keeping in view of the settled law laid down by this Court in the case of Amrawati and another Vs. State of U.P. 2004 (57) ALR 290 as well as judgment passed by Hon'ble Apex Court reported in 2009 (67) ACC 966 SC Lal Kamendra Pratap Singh Vs. State of U.P. No coercive

steps shall be taken against the petitioners for a period of thirty days.

9. In case the petitioner failed to surrender within the aforesaid stipulated period, the court below is at liberty to initiate appropriate proceeding against her. It is further directed that in case the petitioner appears before the court concerned, if her bail application is not possible to consider on the same day, she may be released on interim bail, till the disposal of her bail application.