

(2018) 04 MP CK 0003

Madhya Pradesh High Court (Jabalpur Bench)

Case No: M.Cr.C. No.7209 OF 2013, 10788 OF 2012

Anand Kumar @ Sanjay Lalwani
& Anr

APPELLANT

Vs

Subhash Chandra Lalwani & Ors

RESPONDENT

Date of Decision: April 3, 2018

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 2(d), 87, 204, 482
- Indian Penal Code, 1860 - Section 120B, 181, 193, 195, 211, 406, 420, 464, 466, 467, 468, 471
- Madhya Pradesh Land Revenue Code, 1959 - Section 109, 110

Hon'ble Judges: RAJEEV KUMAR DUBEY, J

Bench: Division Bench

Advocate: Sameer Seth, Atul Dhariwal, Sankalp Kochar

Final Decision: Dismissed

Judgement

This common order shall govern the disposal of these three common petitions i.e. M.Cr.C.No.7209/2013, M.Cr.C.No.1774/2013 &

M.Cr.C.No.10788/2012 filed by three different applicants.

2. The M.Cr.C. No.7209/2013 has been filed by the applicant Anand Kumar @ Sanjay Lalwani against the order dated 07/03/13 passed by learned V

Additional Sessions Judge, Bhopal in Criminal Revision No.882/13 whereby learned ASJ rejected the applicant's revision as time barred filed against

the order dated 28/05/12 passed by Judicial Magistrate, First Class, Bhopal in R.T. No.3763/12, whereby learned JMFC on the complaint of non-

applicant Subhash Chandra Lalwani took cognizance against the applicants for the offences punishable under Section 466, 467, 468, 471, 420, 406 and

120B of IPC and M.Cr.C.No.10788/2012 and M.Cr.C.No.1774/2013 have been filed by the applicant Sneha Bhosle and Sunil Vishwakarma

respectively for quashing of that complaint registered as R.T. No.3763/12.

3. Brief facts of the case which are relevant to the disposal of these petitions are that the complainant/nonapplicant Subhash Chandra Lalwani filed a

private complaint before Judicial Magistrate, First Class, Bhopal averring that applicant Anand Kumar @ Sanjay Lalwani and complainant are real

brother and applicant Smt. Sneha Bhosle is the sister-in-law of accused Anand Kumar @ Sanjay Lalwani and applicant Sunil Vishwakarma was the

servant of Anand Kumar @ Sanjay Lalwani. Pradeep Singh Mehta, who is the maternal cousin of applicant Anand Kumar @ Sanjay Lalwani owned

54.48 acres of agricultural land at village Kanasaiyya, out of which he gave 7.50 acres of land from Khasra No.562 to the complainant in family

arrangement. Applicant Anand Kumar @ Sanjay Lalwani being younger brother had been looking after the whole land for many years. Applicant

Anand Kumar @ Sanjay Lalwani prepared forged power of attorney dated 31/03/1997 purported to be executed by Pradeep Singh Mehta, wherein it

was shown that applicant Pradeep Singh Mehta had appointed and nominated accused Anand Kumar @ Sanjay Lalwani as Manager of the land in

question and thereafter on the basis of said power of attorney applicant Anand Kumar @ Sanjay Lalwani got a partnership deed dated 16/03/2000

executed and made a partnership firm namely M/s Paradise Farms showing Anand Kumar @ Sanjay Lalwani, Smt. Sneha Bhosle and Pradeep Singh

Mehta as partners. Pradeep Singh Mehta has not signed that partnership deed. Anand Kumar @ Sanjay Lalwani on the basis of that forged power of

attorney signed this partnership deed on behalf of Pradeep Singh Mehta and prepared that forged partnership deed to grab the said land. Later,

accused Anand Kumar @ Sanjay Lalwani and Smt. Sneha Bhosle on the basis of that forged power of attorney and partnership deed presented an

application on 20/05/2000 before the Bandobast Adhikari, Bhopal under Section 109, 110 of the M.P. Land Revenue Code to transfer the said land in

the name of Firm i.e. M/s Paradise Farm keeping Pradeep Singh Mehta in the dark. The partnership deed was witnessed by the applicant Sunil

Vishwakarma and co-accused Shyam Joshi. Complainant further stated that during bandobast proceedings, on 05/06/2000 accused Anand Kumar @

Sanjay Lalwani and Sneha Bhosle appeared as witnesses and gave statements on oath, which also shows their mens rea to indulge in conspiracy to

rely upon the forged power of attorney. This act of applicants Anand Kumar @ Sanjay Lalwani and Sneha Bhosle deprived the complainant and

Pradeep Singh Mehta from the aforesaid land and caused wrongful loss to them and wrongful gains to the applicants. Applicant Sunil Vishwakarma

and co-accused Shyam Joshi are also involved in the crime as they witnessed the said partnership deed, so cognizance for the offence punishable

under Sections 466, 467, 468, 471, 420, 406 read with Section 120B of the IPC be taken against applicants and co-accused Shyam Joshi.

4. On the aforesaid, learned Judicial Magistrate recorded the statement of the complainant and his witnesses Shantanu & Pradeep Singh Mehta and

took cognizance against the applicants Anand Kumar @ Sanjay Lalwani, Sunil Vishwakarma, Sneha Bhosle and co-accused Shyam Joshi vide order

dated 02/07/2012 for the offences punishable under Sections 466, 467, 468, 471, 420, 406 read with Section 120B of the IPC and directed to issue

arrest warrant to secure their presence. Against that order applicant Anand Kumar @ Sanjay Lalwani filed Criminal Revision No.882/2013 before the

Sessions Judge, Bhopal which was dismissed by Fifth Additional Sessions Judge, Bhopal vide order dated 07/03/2013 as time barred. Being aggrieved

by that order applicant Anand Kumar @ Sanjay Lalwani filed M.Cr.C.No.7209/2013 and applicant Sneha Bhosle and Sunil Vishwakarma filed

M.Cr.C. No.10788/2012 and M.Cr.C.No.1774/2013 respectively for quashing of that complaint registered as R.T. No.3763/12.

5. Learned counsel for the applicants submitted that applicant Anand Kumar @ Sanjay Lalwani is neither scribe, signatory, nor witness of the alleged

power of attorney. The alleged power of attorney was witnessed by the father of the non-applicant/complainant & applicant Anand Kumar @ Sanjay

Lalwani and there was no reason for the applicant to suspect that the document was forged. Applicant Anand Kumar @ Sanjay Lalwani got the land

mutated into a partnership firm with a bona fide intent to carry out agricultural activities, in which Pradeep Singh Mehta is also a partner. The

applicant neither sold nor usurp the land and the land is still intact. The partnership is not challenged in any Court of law and the business of the firm is

going on smoothly till date. Pradeep Singh Mehta, who is a partner in the firm is not the complainant and has neither denied the existence of

partnership firm in his statement, nor has he raised any objection till date and the land vests with the firm. According to the complaint and revenue

record it is clear that the disputed land was owned by Pradeep Singh Mehta. Complainant filed that complaint stating that Pradeep Singh Mehta, the

maternal cousin of applicant Anand Kumar @ Sanjay Lalwani owned 54.48 acres of agricultural land at village Kanasaiyya, out of which he gave 7.50

acres of land to the complainant from Khasra No.562 in family arrangement. Without producing any documentary evidence in support of his claim,

such as sale/gift deed or family settlement deed regarding the said 7.50 acres of land, filing a complaint after 12 years without trying to avail any

remedy till date to recover possession / title of the said land, itself substantiates that the case is fabricated and has been filed with a mala fide intent.

The complainant had filed an almost identical complaint against the applicants before the same Court, which was registered on 26/06/2012 by the

same learned Magistrate as Subhash Chandra Lalwani Vs. Anand Kumar @ Sanjay Lalwani bearing R.T.No.4798/2012 under the same Sections,

against which the applicant Anand Kumar @ Sanjay Lalwani filed an application under Section 482 of the Cr.P.C. before this Court, which was

registered as M.Cr.C.No.4998/2013 (Anand Kumar @ Sanjay Lalwani Vs. Subhash Chandra Lalwani). The complaint was quashed vide order dated

07/10/2013 and the order was upheld by the Honâ€™ble Supreme Court in Special Leave to Appeal (Cri.) No.1231/2014 vide order dated 21/02/2014,

so the complaint is not maintainable.

6. Learned counsel of applicants further submitted that latter a case of perjury was registered against complainant Subhash Chand Lalwani under

Sections 181, 193, 195, 211, 120-B of the IPC by the same Judicial Magistrate, First Class, Bhopal vide order dated 02/07/2014 as Anand Kumar @

Sanjay Lalwani Vs. Subhash Chandra Lalwani & Others bearing R.T.No.6304/2014. In this order it was also mentioned that Subhash Chand Lalwani

had given a false statement on oath proclaiming his living mother as dead with a criminal intent to prove his entitlement. This order was set aside by

VIII Additional Sessions Judge, Bhopal in Case No.371/2014, against which Criminal Revision No.2037/2015 was filed, which is still pending before

this Court. The said land was owned by Pradeep Singh Mehta and not by Subhash Chand Lalwani, so the complainant has no locus standi to file the

complaint. According to Cr.P.C. only victim is entitled to file the complaint, while complainant Subhash Chand Lalwani has no interest in the suit

property, so he is not entitled to file complaint regarding forged power of attorney. It is well settled that the complainant has to establish that he has

been deprived of or denied of a legal right and that he has sustained injury against the legally protected interest. In this case he has no legal right to

claim in the suit property, so this complaint is not maintainable. In this regard learned counsel placed reliance on the judgments of Honâ€™ble Apex

Court in the matter of Md. Ibrahim & Others Vs. State of Bihar & Another, (2009) 8 SCC 751, Kamal Kishore Biyani Vs. Shyam Sundar & Others,

2014 STPL (Web) 1533 AP and Ayaubkhan Noorkhan Pathan Vs. State of Maharashtra & Others, (2013) 4 SCC 465.

7. Learned counsel further submitted that the applicant has not filed any documentary evidence or other evidence to prove his title, right, possession or

interest in the suit land measuring 7.50 acres, so he is not a victim and it is also not established that any wrongful loss or legal injury caused to him. So,

the complainant has no locus standi to file the present complaint. In this regard he placed reliance on a judgment of Delhi High Court passed in the

case of Employees State Insurance Corporation Vs. State, ILR (2007) 1 Delhi 1010 and Honâ€™ble Apex Court judgement passed in the case of

Ram Biraji Devi & Another Vs. Umesh Kumar Singh & Another, (2006) 6 SCC 699.

8. Learned counsel for the applicant further submitted that the complaint is also time barred as the complaint has been filed almost after lapse of 12

years. During that period respondent neither tried to take possession of the land, nor got the title transferred / mutated till date. In this regard learned

counsel placed reliance on the judgment of Honâ€™ble Apex Court in the case of Suresh Vs. Mahadevappa Shivappa Danannava, (2002) 3 SCC

670.

9. It is further submitted that the learned Judicial Magistrate without assigning any reason, took cognizance against the applicants and passed the order

in a mechanical way, while learned Judicial Magistrate is bound to pass a speaking order after recording reasons, so the impugned order is not

maintainable. In this regard learned counsel placed reliance on the judgments of Honâ€™ble Apex Court passed in the case of GHCL Employees St.

Opt. Trust Vs. M/s Indian Infoline Ltd, (2013) 4 SCC 505, Sunil Bharti Mittal Vs. CBI, (2015) 4 SCC 609 and Pepsi Food Ltd. & Another Vs. Special

Judicial Magistrate & Others, (1998) 5 SCC 749.

10. Learned counsel further submitted that no specific role has been assigned to any of the accused/applicant in the complaint, so the complaint is not

maintainable. In this regard he also placed reliance on the judgment of Honâ€™ble Apex Court passed in the case of Neelu Chopra & Another Vs.

Bharti, (2009) 10 SCC 184. 11. Learned counsel further submitted that the learned Magistrate issued non-bailable warrants in contravention to Section

87 of the Cr.P.C. without recording any reason. In this regard he placed reliance on a judgment of Honâ€™ble Apex Court passed in the case of

Inder Mohan Goswami Vs. State of Uttaranchal, (2007) 12 SCC 1.

12. Learned counsel further submitted that no offence under Section 406 of the IPC is made out against the applicants as the essential ingredients to

justify its invocation were not fulfilled, so the complaint under Section 406 of the IPC in the facts and circumstances of the present case is per se not

maintainable. To constitute an offence under Section 406 of the IPC there must be clear and specific allegation that the accused was entrusted with

some property or domain over it by the complaint and that the accused dishonestly misappropriated or converted the same to his own use or that

accused refused to return back the articles when the same were demanded by the complainant. But, that ingredient is missing from the complaint, so

no case under Section 406 of the IPC is made out against the applicants. In this regard learned counsel placed reliance of a judgment of Honâ€™ble

Apex Court passed in the case of Velji Raghavji Patel Vs. State of Maharashtra, (1965) 2 SCR 429 and Delhi High Court judgement passed in the

case of Anu Gill Vs. State of Another, 2001 (59) DRJ 417.

13. Learned counsel further submitted that no offence under Section 420 of the IPC is also made out as no dishonest intention is attributed to the

applicants/accused at the initial stage of the transaction. Beside this no misrepresentation was made to the complainant / nonapplicant by the

applicants/accused at any stage. Thus, the complainant is not an aggrieved party and the offence under Section 420 of the IPC is not attracted. The

applicant Anand Kumar @ Sanjay Lalwani was not the beneficiary of the so called mutation, because even pursuant to mutation the land in question

was mutated in revenue records in the name of the partnership firm and not in any individual name. Thus, when applicant Anand Kumar @ Sanjay

Lalwani was not the beneficiary of the property in dispute, no wrongful gain was caused to him, so the offence of cheating defined under Section 420

of the IPC is not made out. In this regard learned counsel placed reliance on the judgments of Honâ€™ble Apex Court passed in the case of S.W.

Palanitkar & Another Vs. State of Bihar & Another, (2002) 1 SCC 241, Inder Mohan Goswami & Another Vs. State of Uttaranchal & Others,

(2007) 12 SCC 1 and on the Delhi High Court judgements passed in the case of Wolfgang Reim Vs. State, 2012 SCC Del. 3341. O.S. Pasricha &

Another Vs. State & another, 2006 SCC Del. 778, Smt. Ira Juneja & Another Vs. State of Another, 2004 (72) DRJ 207.

14. Learned counsel for the applicants further submitted that no offence under Section 466, 467, 468, 471 of the IPC is also made out against the

applicants as according to the complainant the applicants got forged power of attorney ostensibly bearing the signatures of Pradeep Singh Mehta and

on the basis of the same he executed a partnership deed namely M/s Paradise Farms. Subsequently, the applicants got the land mutated in favour of

M/s Paradise Farms by an order of the Revenue Court. It is alleged by the complainant that in this manner a wrongful loss had been caused to him as

well as to Pradeep Singh Mehta. The aforesaid allegation levelled by the complainant is liable to be discarded forthwith as no forgery has been

committed by the applicants because even as per the document in dispute i.e. the power of attorney in question, the applicant is not a signatory to the

same and it has been executed by Pradeep Singh Mehta and countersigned as a witness by Late Shri Sardarmal Lalwani, who was the father of both

the complainant and as well as the applicant Anand Kumar @ Sanjay Lalwani. Thus, the charge of forgery against the applicant has to necessarily fail

because he is neither the scribe nor signatory to the document in question. The offence under Section 464 of the IPC could be said to have been

committed only if a document falls under the category of a false document and it is not sufficient that a document has been made or executed

dishonestly or fraudulently. When a document is executed by a person claiming a property which is not his, he is not 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, was not execution of a false

document, there cannot be any forgery. So the offence under Section 467, 471 of the IPC is also not made out from the complaint. In this regard

learned counsel again placed reliance on a judgment of Honâ€™ble Apex Court in the case of Md. Ibrahim & Others Vs. State of Bihar & Another,

(2009) 8 SCC 751.

15. Learned counsel further submitted that even if it is to be assumed that the alleged power of attorney was used by the applicants for mutation of

the land in question, still by no stretch of imagination it comes within the ambit of Section 466 of the Indian Penal Code, because admittedly there was

no judicial proceeding where the alleged document was used nor was it purported to have been made by a Public Servant and no prejudice or loss was

caused to the complainant or Pradeep Singh Mehta. Further, there is no evidence to show that the applicant forged the alleged document. The

complainant placed reliance on a photocopy of alleged power of attorney, which is not admissible under the Evidence Act. The

nonapplicant/complainant has not produced any handwriting expert and the report of handwriting expert which was filed by the applicant is also not

based on specific evidence. Moreover, the signature of the father of the applicant namely Late Shri Sardarmal Lalwani, who signed as witness on the

alleged power of attorney has not been challenged, so the allegation that the power of attorney was false prima facie does not appears to be correct.

In this regard learned counsel placed reliance on a judgment of Honâ€™ble Apex Court passed in the case of Government of A.P. Vs. Karri Chinna

Venkata Reddy & Others, 1995 Supp (1) SCC 462 and the judgments of this Court passed in the case of Rashid Khan & Another Vs. State of M.P.,

2011 (3) MPLJ 575 and Ratanlal Vs. Kishanlal & Others, 2012 (1) MPLJ 120.

16. Learned counsel further submitted that no charge of conspiracy is also made out against the applicants as there is no material on record to show

that there was any meeting of mind with the co-accused persons. The applicant had no reason to doubt the genuineness of the alleged power of

attorney since it was witnessed by the father of both the complainant as well as the applicant Anand Kumar @ Sanjay Lalwani. On the contrary it can

be seen from the record that the complainant for reasons best known to him has maintained splendid silence for a substantial period of 12 years, being

fully aware that the land in question was in possession of the applicant Anand Kumar @ Sanjay Lalwani. In this regard learned counsel placed

reliance on the judgments of Honâ€™ble Apex Court in the case of P.K. Narayanan Vs. State of Kerala, (1995) 1 SCC 142, State of Kerala Vs. P.

Sugathan, (2000) 8 SCC 203, Central Bureau of Investigation Vs. K. Narayana Rao, (2012) 9 SCC 512, K.K. Vijayachandran Vs. The

Superintendent of Police, 2006 SCC Ker 242, V.C. Shukla Vs. State, 1980 SCC 92 and Kehar Singh Vs. State, (1988) 3 SCC 609.

17. Learned counsel further submitted that the dispute between the parties is purely of a civil nature and no criminal case is made out from the

averments made in the complaint against the applicants. In this regard he placed reliance on the judgments of Honâ€™ble Apex Court passed in the

case of Inder Mohan Goswami & Another Vs. State of Uttaranchal & others, (2007) 12 SCC 1, Indian Oil Corporation Vs. NEPC India Ltd., (2006)

6 SCC 736 and State of Haryana Vs. Bhajan Lal, 1992 Supp. (1) SCC 335.

18. On the strength of aforesaid submissions learned counsel for the applicants prayed for quashing of the order dated 07/03/2013 passed by V

Additional Sessions Judge, Bhopal in Cr.R.No.882/2013 and also the order dated 28/05/2012 passed by learned JMFC in R.T.No.3763/2012.

19. On the other hand learned counsel for the respondent/complainant submitted that some part of the land was given by Pradeep Singh Mehta to the

complainant, so the complainant is an aggrieved person regarding suit land. Even otherwise Pradeep Singh Mehta has also given statement in support

of the complaint and clearly deposed that he had not signed the power of attorney and applicant used that power of attorney for preparing partnership

deed and on that basis tried to mutate the said land, which caused wrongful loss to the complainant. Even from the power of attorney it is clear that

the applicant had not given any money or land for that partnership firm. The whole land of Pradeep Singh Mehta was turned to partnership firm

property, which clearly shows the fraudulent intention of the applicants. The act of the applicants is not only of a civil nature, but also comes under the

purview of cheating and forgery, so the criminal complaint is also maintainable. Section 467 of the IPC does not require the prosecution to prove that

the accused who commits forgery has benefited thereby or any loss has occasioned to anybody thereby. In this regard he placed reliance on a

judgment of Honâ€™ble Apex Court passed in the case of Suresh Hingorani Vs. State of Haryana, 2013 (9) SCC 454. Learned counsel further

submitted that from the act of the applicants injury was caused to the complainant, so the complaint is maintainable. Even otherwise any one can set

criminal law in motion and there is no question of locus standi. In this regard learned counsel placed reliance on the judgments passed in the case of

Union of India Vs. Madan Dey, 1991 Cr.L.J. 374 (Cal), Lajpat Rai Vs. The State of Delhi, 1983 Cr.L.J. 888 (Delhi), Shailendra Pradhan Vs. Vipparla

Jyoti, 2006 Cr.L.J. 1483, Gajraj Sinha Vs. Emperor, AIR 1935 ALL 938, Mishrilal Mangilal Vs. Rajamallu, 1978 Cr.L.J. 1360 (AP), Antulay Vs.

Ramdas Nayak, AIR 1984 SC 718, Subramaniam Swamy Vs. Manmohan Singh, (2012) 3 SCC 64 and N. Natrajan Vs. B.K. Subha Rao, AIR 2003

SC 541.

20. Learned counsel further submitted that if the Magistrate prima facie satisfied that sufficient grounds are there to continue against the accused, the

Magistrate has right to issue process. In this regard learned counsel placed reliance on the judgments passed in the case of Smt. Nagawwa Vs.

Veeranna Shiva Lingappa Konjalgi, AIR 1976 SC 1947, Sheo Nandan Paswan Vs. State of Bihar, AIR 1987 SC 877 and Smt. Swarn Anand Vs.

Chief Judicial Magistrate, 1977 Cr.L.J. 355.

21. Learned counsel of the non-applicant further submitted that a case may apparently look to be of civil nature or may involve a commercial

transaction, but such civil dispute or commercial disputes in certain circumstances may also contain ingredients of criminal offence and such disputes

have to be entertained notwithstanding they are also civil dispute. In this regard learned counsel placed reliance on a judgment passed in the case of

Arun Bhandari Vs. State of U.P. & Others, 2013 (2) SCC 801.

22. This Court has gone through the record and arguments advanced by the learned counsel for both the parties.

23. From the above mentioned judgements of Honâ€™ble Apex Court relied by the learned counsel of the both the parties it emerge that the

revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the

complaint or the FIR, even if taken at the face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and

controversial facts cannot be made the basis for the exercise of the jurisdiction. The inherent jurisdiction of the High Court can be exercised to quash

proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily, criminal

proceedings instituted against an accused person must be tried under the provisions of the Code and the High Court would be reluctant to interfere

with the said proceedings at an interlocutory stage. However, there are some categories of cases where the inherent jurisdiction can and should be

exercised for quashing the proceedings. Where it may be possible for the High Court to take the view that the institution or continuance of criminal

proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would

secure the ends of justice. Where a criminal proceeding is manifestly attended with mala fide. Where it appears that matter, which is essentially of a

civil nature, has been given a cloak of criminal offence. Because criminal proceedings are not a shortcut of other remedies available in law, but at the

same time merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of

forgery and fraud there is always some element of civil nature. So such civil dispute or commercial disputes which may also contain ingredients of

criminal offence have to be entertained notwithstanding they are also civil dispute.

24. If we examine the instant case in the light of above settled position of law, the non-applicant filed complaint averring that the disputed 54.48 acres of land situated at Kanha Saiya was owned by Pradeep Singh Mehta and out of that land Pradeep Singh Mehta gave 7.50 acres of land of Khasra No.562 to the complainant/nonapplicant. In alternate complainant also averred that he got that land in family partition. But complainant did not produce any document or family settlement deed in this regard. The disputed land is immovable property earlier owned by Pradeep Singh Mehta and cannot be transferred to applicant who is not a family member of Pradeep Singh Mehta without any transfer deed like gift deed, sale deed etc., while complainant did not file any such document in this regard. So, merely on the oral statement of applicant that Pradeep Singh Mehta gave 7.50 acres of land of Khasra No.562 to him or he got that land in family partition can not be considered correct. Although, Pradeep Singh Mehta also stated before the Court that he gave 7.50 acres of land of Khasra No.562 to complainant, but he also did not depose that how and when he transferred that land to the complainant. From the averment of complaint it is clear that the disputed land is in possession of applicant since a long time. Complainant also did not depose that he ever tried to take possession of land from the applicant, which was allegedly given by Pradeep Singh Mehta to him. So in the absence of any documentary evidence only on the basis of oral statement of complainant and Pradeep Singh Mehta it can not be assumed that complainant has any interest in disputed land.

25. But, it is undisputed that earlier suit land was owned by Pradeep Singh Mehta. Although, Pradeep Singh Mehta did not file that complaint, but complainant filed that complaint averring that Applicant Anand Kumar @ Sanjay Lalwani prepared forged power of attorney dated 31/03/1997 purported to be executed by Pradeep Singh Mehta, wherein it was shown that applicant Pradeep Singh Mehta had appointed and nominated accused Anand Kumar @ Sanjay Lalwani as Manager of the land in question and thereafter on the basis of said power of attorney applicant Anand Kumar @ Sanjay Lalwani got a partnership deed dated 16/03/2000 executed and made a partnership firm namely M/s Paradise Farms, showing Anand Kumar

@ Sanjay Lalwani, Smt. Sneha Bhosle and Pradeep Singh Mehta as partners. Pradeep Singh Mehta has not signed that partnership deed. Anand

Kumar @ Sanjay Lalwani on the basis of that forged power of attorney signed this partnership deed on behalf of Pradeep Singh Mehta and prepared

that forged partnership deed to grab the land. Later, accused Anand Kumar @ Sanjay Lalwani and Smt. Sneha Bhosle on the basis of that forged

power of attorney presented an application on 20/05/2000 before the Bandobast Adhikari, Bhopal under Section 109, 110 of the M.P. Land Revenue

Code to transfer the said land in the name of Firm M/s Paradise Farm keeping Pradeep Singh Mehta in the dark. Thus, the applicants also caused

wrongful loss to Pradeep Singh Mehta. Pradeep Singh Mehta also gave statement in support of complaint before the Court and stated that the

applicants caused wrongful loss to him, which shows that Pradeep Singh Mehta also complained regarding applicants' act before the Court. The

situation would have been different if Pradeep Singh Mehta did not give statement in support of the complaint.

26. Section 2 (d) of the Cr.P.C. defines "complaint" as follows:-

"Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person,

whether known or unknown, has committed an offence, but does not include a police report."

27. From the perusal of Section 2(d) of the Cr.P.C. it is evident that any allegation against any person made orally to a Magistrate, with a view to his

taking action against him, under the Code is also a complaint, so the argument of the learned counsel for the applicants that the complaint is not

maintainable because the complainant has no interest in the disputed land, is not tenable.

28. The facts of the judgements passed in the case of Md. Ibrahim & Others Vs. State of Bihar & Another, (2009) 8 SCC 751, Kamal Kishore Biyani

Vs. Shyam Sundar & Others, 2014 STPL (Web) 1533 AP and Ayaubkhan Noorkhan Pathan Vs. State of Maharashtra & Others, (2013) 4 SCC 465

(supra) relied by the learned counsel of the applicants do not match with the present case. In above mentioned cases complaint was filed by the

persons who did not suffer, any legal injury by the act of accused, while in this case as discussed above Pradeep Singh Mehta person aggrieved has

also complained before the Court regarding the act of applicant Anand Kumar @ Sanjay Lalwani. Even, Honâ€™ble Apex Court and respective High

Courts in its judgements passed in the case of Antulay Vs. Ramdas Nayak, AIR 1984 SC 718, Subramaniam Swamy Vs. Manmohan Singh, (2012) 3

SCC 64, N. Natrajan Vs. B.K. Subha Rao, AIR 2003 SC 54, Union of India Vs. Madan Dey, 1991 Cr.L.J. 374 (Cal), Lajpat Rai Vs. The State of

Delhi, 1983 Cr.L.J. 888 (Delhi), Shailendra Pradhan Vs. Vipparla Jyoti, 2006 Cr.L.J. 1483, Gajraj Sinha Vs. Emperor, AIR 1935 ALL 938 and

Mishrilal Mangilal Vs. Rajamallu, 1978 Cr.L.J. 1360 (AP) (Supra) as relied by the learned counsel for the non-applicant held that any one can set

criminal law in motion. While in this case Pradeep Singh Mehta person aggrieved has also complained regarding applicantâ€™s act before the Court.

So the argument of learned counsel of the applicants that the complainant Subhash Chandra Lalwani has no interest in the disputed land, so the

complaint is not tenable, has no force.

29. Although, alleged power of attorney was executed in the year 1997 and partnership deed was executed in the year 2000, while the complainant

filed this complaint in the year 2010. But, complainant deposed that the act of the applicants came to his knowledge in the year 2010 itself. Even

otherwise no period of limitation is prescribed for taking cognizance of offence which are punishable with imprisonment exceeding three years in the

Cr.P.C. The judgment of Honâ€™ble Apex Court passed in the case of Suresh Vs. Mahadevappa Shivappa Danannava, (2002) 3 SCC 670 (supra),

relied by the learned counsel for applicants does not help to the applicants much because in that case Honâ€™ble Apex Court did not quash the

proceeding only on the point of delay, but on the ground that no offence was made out from the complaint against accused.

30. Although, it appears from the record that learned JMFC did not state the reasons in the impugned order for issuance of summons against

applicants, but merely on that ground the order cannot be quashed. In the judgements of GHCL Employees St. Opt. Trust Vs. M/s Indian Infoline Ltd,

(2013) 4 SCC 505, Sunil Bharti Mittal Vs. CBI, (2015) 4 SCC 609 and Pepsi Food Ltd. & Another Vs. Special Judicial Magistrate & Others, (1998) 5

SCC 749 (Supra) relied by the learned counsel of the applicants Honâ€™ble Apex Court did not quash the proceedings only on the ground that the

Magistrate had not passed the speaking order. On the other hand Honâ€™ble Apex Court in the case of Bhushan Kumar v. State (NCT of Delhi),

(2012) 5 SCC 424 held â€œSection 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It

clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may

be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is

nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the

validity of the summons issuedâ€.

31. Learned counsel further submitted that the learned Magistrate issued non-bailable warrants in contravention to Section 87 of the Cr.P.C. without

recording any reason. In this regard he placed reliance on a judgment of Honâ€™ble Apex Court passed in the case of Inder Mohan Goswami Vs.

State of Uttaranchal, (2007) 12 SCC 1, wherein Honâ€™ble Apex Court cautioned the Courts that personal liberty is paramount, so Courts at the first

and second instance to refrain from issuing nonbailable warrants for securing the presence of accused. But in this case Honâ€™ble Apex Court do

not held that if Court issued the warrants at the first instance, the complaint can be quashed only on that ground.

32. Learned counsel for the applicants has also submitted that when a document is executed by a person claiming the owner of the property, which is

not his, is not execution of a false document, there cannot be any forgery, so provision of Section 467 & 471 of the IPC are not attracted in the case.

In this regard he has placed reliance on a judgment of Honâ€™ble Apex Court passed in the case of Md. Ibrahim & Others Vs. State of Bihar &

Another, (2009) 8 SCC 751. But that judgement do not help to the applicants much. In that case appellant No.1 sold the disputed property to the other

appellant claiming that the said property was owned by him, while in this case applicant Anand Kumar @ Sanjay Lalwani signed partnership deed on behalf of Pradeep Singh Mehta claiming that Pradeep Singh Mehta had authorized him to sign that document.

33. In the aforesaid case also Honâ€™ble Apex Court observed that 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. So it is clear that the applicants executed forged partnership deed and thereby committed forgery. In this case also applicant Anand Kumar @ Sanjay Lalwani signed partnership deed on behalf of Pradeep Singh Mehta claiming that Pradeep Singh Mehta has authorized him to sign that document.

34. Pradeep Singh Mehta in his statement clearly deposed that he did not sign that power of attorney and applicants caused wrongful loss to him.

Although, complainant did not produce handwriting expert in his evidence, but from the statement of Pradeep Singh Mehta prima facie it appears that

the said power of attorney was not signed by Pradeep Singh Mehta. Applicants Anand Kumar @ Sanjay Lalwani and Sneha Bhosle by using this

forged power of attorney prepared partnership deed and applicant Anand Kumar @ Sanjay Lalwani had signed that partnership deed on behalf of

Pradeep Singh Mehta. It is apparent from the partnership deed and mutation proceedings that the suit land which was earlier solely owned by Pradeep

Singh Mehta was mutated in the name of M/s Paradise Farms, in which the applicant Anand Kumar @ Sanjay Lalwani had 50% share and applicant

Sneha Bhosle had 20% share and by this partnership deed Anand Kumar @ Sanjay Lalwani got 50% ownership and applicant Sneha Bhosle got 20%

ownership in the disputed land, which is clearly a wrongful loss to Pradeep Singh Mehta and wrongful gain to these applicants. Even, the applicant

Anand Kumar @ Sanjay Lalwani gave false statement before the revenue authority that Pradeep Singh Mehta authorised him to give statement on his behalf.

35. Although, it does not appear from the record that the applicants prepared the said power of attorney, but it is clear that on the basis of the said

power of attorney applicants Anand Kumar @ Sanjay Lalwani and Smt. Sneha Bhosle prepared partnership deed, on which applicant Anand Kumar

@ Sanjay Lalwani signed on behalf of Pradeep Singh Mehta, claiming that Pradeep Singh Mehta has authorized him to sign that partnership deed and

on the basis of that partnership deed applicants Anand Kumar @ Sanjay Lalwani got 50% ownership and Sneha Bhosle got 20% ownership in the

disputed land. There is no document on record which shows that Pradeep Singh Mehta had given consent to form that partnership firm and get profit

as a partner of that firm.

36. Learned counsel for the applicants also submitted that the applicants Anand Kumar @ Sanjay Lalwani and Smt. Sneha Bhosle were not the

beneficiary of the so called mutation, because even pursuant to mutation the land was mutated in the revenue record in the name of partnership firm

and not on any individuals name. Thus, when Anand Kumar @ Sanjay Lalwani and Smt. Sneha Bhosle were not the beneficiary of the property in

dispute, no wrongful gain were caused to them. But this argument has also no force as it is apparent from the partnership deed and mutation

proceedings that the suit land which was earlier solely owned by Pradeep Singh Mehta was mutated in the name of M/s Paradise Farms, in which the

applicants Anand Kumar @ Sanjay Lalwani has 50% share and Sneha Bhosle has 20% share, which shows that in execution of firm the applicant

Anand Kumar @ Sanjay Lalwani got 50% and applicant Sneha Bhosle got 20% ownership of the said land, which is clearly a wrongful loss to

Pradeep Singh Mehta. The applicant Anand Kumar @ Sanjay Lalwani gave false statement before the revenue authority that Pradeep Singh Mehta

authorised him to give statement on his behalf. Which prima facie shows that applicants Anand Kumar @ Sanjay Lalwani and Sneha Bhosle prepared

forged partnership deed and by producing it before settlement officer got Pradeep Singh Mehta's land muted in the name of M/s Paradise Farms

and got share in it, so offence under Section 467 of the IPC is prima facie made out against the applicants Anand Kumar @ Sanjay Lalwani and

Sneha Bhosle.

37. So, in the considered opinion of this Court learned Magistrate did not commit any mistake in taking cognizance against the applicants Anand

Kumar @ Sanjay Lalwani and Sneha Bhosle on the complaint filed by the non-applicant Subhash Chandra Lalwani.

38. Learned counsel of the applicants also submitted that offence under Section 406, 420, 466, 468, 471 120B of IPC is also not made out against

applicants. But at this stage this Court is not inclined to analyze the evidence produced by the complainant as to whether the offence punishable under

section 406, 420, 466, 468, 471 120B of the IPC is made out against the applicants Anand Kumar @ Sanjay Lalwani and Sneha Bhosle or not. They

are free to raise all the objections in this regard before the trial Court at the time of charge arguments.

39. As far as the applicant Sunil Vishwakarma is concerned, from the record it only appears that the partnership deed was signed by him as a witness.

By signing said partnership deed he has only certified that Anand Kumar @ Sanjay Lalwani and Smt. Sneha Bhosle had signed the said partnership

deed before him. There is no evidence on record that he got any share in Pradeep Singh Mehta's property. Although, the complainant stated that Sunil

Vishwakarma is the servant of Anand Kumar @ Sanjay Lalwani and he was also involved in conspiracy with Anand Kumar @ Sanjay Lalwani and

Sneha Bhosle, but there is no such evidence on the record which supports the complainant's statement in relation to involvement of applicant Sunil

Vishwakarma in the incident. It appears that complainant's statement regarding involvement of applicant Sunil Vishwakarma in the incident is

merely based on assumption. So, only on the basis of his statement and as to the fact that applicant Sunil Vishwakarma signed the partnership deed as

a witness, prima facie no offence under Section 406, 420, 466, 467, 471, 468 and 120B of IPC is made out against applicant Sunil Vishwakarma.

40. Hence, M.Cr.C.No.1774/2013 under Section 482 of the Cr.P.C. filed by applicant Sunil Vishwakarma is hereby allowed and the criminal

complaint pending before JMFC, Bhopal as R.T. No.3763/12 is hereby quashed for the applicant Sunil Vishwakarma.

41. A copy of this order be sent to JMFC, Bhopal with a direction that to delete the name of the applicant Sunil Vishwakarma from the complaint.

42. So far as M.Cr.C.No.10788/12 & M.Cr.C.No.7209/13 filed by applicants Sneha Bhosle & Anand Kumar @ Sanjay Lalwani respectively

are concerned, the same are hereby dismissed.

43. A copy of this order be placed in the record of M.Cr.C.No.1774/2013 & M.Cr.C.No.10788/2012.

Certified copy as per rules.