

**(Ashutosh Sharma vs. Shri K.L. Yadav & Ors.)**

**06.01.2017**

Shri Awadhesh Sharma, counsel for the applicant.

None for the respondents No.1 to 3 though served.

Shri Prakhar Dhengula, Panel Lawyer for the respondent/State.

This petition under Section 482 of Cr.P.C. has been filed against the order dated 23.7.2011 passed by Second Additional Sessions Judge, Guna in Criminal Revision No. 54/2011 thereby affirming the order dated 28.1.2011 passed by Judicial Magistrate First Class, Radhogarh, District Guna by which the complaint filed by the applicant against the respondents No.1 to 3 for offences punishable under Sections 467, 468, 420 of IPC was dismissed under Section 203 of Cr.P.C.

The necessary facts for the disposal of this case are that a complaint was filed against the respondents by the applicant under Section 200 of Cr.P.C. alleging that on 31.12.2005 he had filed an application for batankan of his land and the final order was passed on 10.2.2009. The case was registered in the court of respondent No.1 and the complainant obtained certified copies of the record on 3.3.2009. On perusal of the said documents the complainant came to know that although he had filed an application on 31.12.2005 and the respondent No.1 had put his signatures and had mentioned the date 31.12.2005 below his signatures, however, after scoring out 05, 07 was mentioned showing as if the application was filed on 31.12.2007. Alongwith the application a Vakalatnama was filed on which the date 30.12.2005 was mentioned. It was stated that the order sheets from 31.12.2005 till 2.1.2008 were removed. The report dated 2.1.2006 was submitted by

Patwari Halka. However, the case was rejected by the respondent No.3 against which an appeal is pending before the Court of SDO. Thus, it was alleged that the act of the respondents No.1 to 3 is punishable under Section Sections 467, 468, 420 of IPC.

The Trial Magistrate after recording the statements of the witnesses under Sections 200 and 202 of Cr.P.C. dismissed the complaint under Section 203 of Cr.P.C. It appears from the order dated 28.1.2011 passed by the Court of Magistrate, the Court had allowed the respondents No.1 to 3/accused to participate in the proceedings and to argue on the question that whether summons can be issued or not.

Trial Magistrate after considering the facts of the case in detail observed that the complainant has not filed any material, to show that any previous order sheets were ever destroyed or removed. The Trial Magistrate further held that under the facts and circumstances of the case sanction for prosecution under Section 197 of Cr.P.C. is essential. It was further held that in view of the provisions of Section 195 of Cr.P.C., as it is alleged that the order sheets of the Court have been manipulated, therefore, the Court cannot take cognizance at the instance of a private person.

Being aggrieved by the order of Trial Magistrate, the applicant filed a criminal revision which has suffered dismissal by order dated 23.7.2011.

It is contended by the counsel for the applicant that although the application was filed on 31.12.2005 but the order sheet for the first time was written on 2.1.2008 and in fact the respondents have removed/destroyed the previous order sheets. In the entire complaint, there is no mention that from 31.12.2005 till 2.1.2008 on what dates the case was taken up

by the respondents. There is no whisper in the complaint that he had ever appeared before the Court of respondent No.1 prior to 2.1.2008 and had participated in the proceedings. It is merely mentioned in the complaint that his counsels Shri Rajiv Nayan Sharma and Shri Tej Narayan Parashar might have appeared on several dates but all those records and order sheets have been removed from the government record.

It was further alleged that from order sheet dated 2.1.2008, it is clear that the case was fixed for 2.2.2008 but it was taken up on 4.8.2008 and why it was not taken up on 2.2.2008 and why it was taken up for the first time on 4.8.2008 i.e. about six months after the fixed date are certain aspects which show the order sheets have been manipulated. It was further pleaded that although he has engaged two lawyers but none of the order sheet bears their signatures which adversely reflects on the working of the Court. If the applicant and his lawyers were not appearing why the case was not dismissed in default. It was further alleged that when none of the order sheets bears the signatures of his lawyers then why his lawyers were asked to sign the order sheet after the final order was passed.

Considered the submissions made by the counsel for the applicant and the documents filed along with this petition.

From the order sheet dated 2.1.2008, it appears that the application for batankan was filed on 2.1.2008. The case was directed to be registered and proclamation was directed to be issued. The case was then fixed for 2.2.2008. However, it appears that the case was taken up on 4.8.2008. There is no intervening order sheet to show that the case was taken up on 2.2.2008. However, from the order sheet of 4.8.2008, it appears that it contains the signatures of the applicant. The

presence of the applicant is also marked in the order sheet. Thus, it is clear that the applicant was aware of this fact that case would be taken on 4.8.2008. If certain order sheets were removed or manipulated or destroyed then the applicant must have come to know about the said aspect on 4.8.2008 itself then why he did not raise any objection on the said date by filing a written objection before the same Court or why he did not make any complaint to the higher authorities are certain facts which have remained unanswered. Further, from the order sheet dated 31.1.2009, it is clear that the applicant was present and he had signed the order sheet. Again he did not make any complaint with regard to the alleged manipulation of the order sheets. By order dated 31.1.2009, the case was fixed for 6.2.2009. On 6.2.2009 the statements of the witnesses were recorded on the spot. The presence of the applicant is also mentioned in the order sheet. The order sheets also contains the signatures of the applicant. It does not appear from the order sheet that the applicant took any objection with regard to recording of statements of the witnesses on the spot. Thereafter, the final order was passed on 10.2.2009. Thus, it is clear from the record that the applicant had participated in the proceedings on different dates but he did not raise any objection at any point of time. It is only after the rejection of the application, it appears that the applicant started making allegations against the respondents. Furthermore, how the respondents No.2 and 3 had committed any offence is also not clear. The respondent No.2 was working as a Reader in the Court of Tahsildar and the respondent No.3 is the Tahsildar who had passed the final order.

It is contended by the counsel for the applicant that the

SDO, Radhogarh, District Guna by order dated 29.5.2009 had set aside the order dated 10.2.2009 after noticing certain procedural illegalities committed by the respondents and thus prima facie there is a sufficient material on record to show that the respondents had committed the offences punishable under Sections 467, 468, 420 of IPC. The order dated 29.5.2009 was passed by the Court of SDO, Radhogarh, District Guna during the pendency of the Criminal Revision No.54/2011 which was decided on 23.7.2011. Why the applicant did not produce the order before the Revisional Court has not been clarified. The document which was already in existence prior to passing of the order under challenge and if the applicant has chosen not to place the said document on record before the Revisional Court then the applicant cannot take advantage of the said document by placing the same on record before this court in petition under Section 482 of Cr.P.C. Furthermore, any order passed in appeal in which certain procedural illegalities were pointed out by the Appellate Court by itself would not sufficient to hold that prima facie the respondents have committed any offence punishable under Sections 467, 468, 420 of IPC. It is well settled principle of law that in order to constitute an offence, the complainant must allege the mens rea on the part of the persons concerned. The entire complaint is based on surmises and conjectures. It is merely mentioned that after the application was filed on 31.12.2005 his counsels might have appeared and signed the order sheets which was subsequently removed. Even the complainant is not sure that whether his advocates had ever appeared before the Court of Tahsildar after 31.12.2005 or not. Even he has not examined his lawyers to state that the proceedings were taken up by the

respondent No.1 after 31.12.2005 and they had signed several order sheets which were subsequently removed. In absence of any specific allegation, merely on conjectures and surmises of the complainant it cannot be said that the complainant has prima facie placed sufficient material on record to issue summons against the respondents No.1 to 3. Even there is nothing on record that what was the mens rea for removing or destroying the order sheets. In absence of any prima facie material to show that there were proceedings after 31.12.005 which were subsequently destroyed, it cannot be said that the act of the respondent No.1 prima facie shows the commission of offences punishable under Sections 467, 468, 420 of IPC.

As there is nothing on record to show that the respondents had committed any offence punishable under Sections 467, 468, 420 of IPC and in absence of any specific averment to the extent that there was any criminal intention on part of the respondents in conducting the proceedings on the application filed by the applicant, merely because some procedural lapses were found by the SDO while deciding the appeal would not be sufficient to hold that sanction from prosecution as required under Section 197 of Cr.P.C. is not required. As the action alleged against the respondents have reasonable nexus with discharge of their duties, therefore, because there were certain procedural lapses without any criminal intention then under such circumstances, it can be said that the act complained of has a reasonable nexus with the discharge of duties by the respondents necessitating the sanction for prosecution as required under Section 197 of Cr.P.C. It is not out of place to mention here that prior to issuance of summons the accused persons had no right to

participate in the proceedings before the Court of Trial Magistrate but even the Trial Magistrate allowed them to participate in the proceedings and to make submissions with regard to necessity of sanction under Section 197 of Cr.P.C. Allowing the persons who have been arrayed as accused in the complaint to participate in the proceedings was not in accordance with law. However, as this Court on appreciation of material available on record has come to a conclusion that sanction for prosecution was required under the facts and circumstances of this case, then this Court is of the view that while dismissing the complaint under Section 203 of Cr.P.C. the Trial Magistrate did not commit any illegality or irregularity. The Revisional Court also rightly dismissed the revision.

Accordingly, this petition under Section 482 of Cr.P.C. fails and is hereby dismissed.

**(alok)**

**(G.S. Ahluwalia)  
Judge**