

**Smt.C.K.Rathi Vs. Sudarshan Jhawar and Another.**  
**06/04/2017**

Shri Prashant Sharma, counsel for the applicant.

None for the respondents though served.

This criminal revision under Section 397 read with Section 401 of Cr.P.C has been filed against the order dated 14.5.2012 passed by Tenth ASJ Gwalior in Sessions Trial No.180 of 2012 by which, the respondents were discharged from offences under Sections 420, 467 and 468 of IPC and only charge under Section 423 of IPC was framed and since the offence under Section 423 of IPC is not triable by the Sessions Court, therefore, the case was sent back to the Committal Court for trial.

It is not out of place to mention here that the respondents had also filed a petition under Section 482 of Cr.P.C against the order dated 14.5.2012 before this court which was registered as M.Cr.C.No.9392 of 2012. It is submitted by counsel for the applicant that the said case has already been dismissed in default by this court vide order dated 9.12.2016.

The necessary facts for the disposal of the present revision in short are that a complaint for offence under section 418, 420, 423, 467, 468 and 120B of IPC was filed by the complainant alleging that land bearing Survey No.205 situated in village Maharajpura Ramanna District Gwalior was purchased by the applicant jointly along with other co-owners by registered sale deed dated 27.1.1999. It was alleged that the respondent no.1 by projecting himself to be representative of the owners executed a lease deed in favour of M.P. Education Society run by the respondents. It was further stated that in fact,

no authorization was given in favour of the respondent no.1 and declaration made by respondent no.1 in the lease deed is false *per-se*.

The Magistrate after recording statements of the witnesses by order dated 4.2.2012 took cognizance of the offence against respondents for offence under Section 420, 467, 468 and 120B of IPC.

As the offences were triable by the Sessions Court, therefore, the case was committed. After committal, the Court of Sessions discharged the respondents for offence under Section 420, 467 and 468 of IPC and framed charge under Section 423 of IPC. Accordingly, the case has been sent back to the Committal Court as the offence under Section 423 of IPC is not triable by the Sessions Court.

It is submitted by the counsel for the applicant that the Sessions Court while appreciating the allegations made in the complaint did not consider the declaration made by respondent no.1 in proper perspective. A specific false declaration was made to the effect that the respondent no.1 has been authorised by co-owners to execute the lease deed on their behalf. Since neither any power of attorney was executed by the applicant or co-owners in favour of the respondent no.1 nor they had ever authorized respondent no.1 to execute the lease deed in respect of the property co-owned by them, therefore, it was submitted that the respondents have also committed offence under Section 420, 467 and 468 of IPC and the Sessions Court has not taken note of this false declaration made in the lease deed properly. It is further submitted that the court below had merely

mentioned that the false declaration made in the lease deed will not adversely affect the title of the complainant and lost sight of the fact that when the property is leased out to a third person, then, naturally, the complainant would be deprived of her right to enjoy the said property. It is further submitted that in view of this false declaration, it can safely be said that the respondent no.1 had prepared a forged document and had committed forgery for the purpose of cheating.

None appears for the respondent though served.

This Court has gone through the order dated 14.5.2012.

In the present case, the basic allegation against the respondent no.1 is that although he was not authorised by the complainant or other co-owner to act on their behalf, inspite of that, he executed a lease deed for a period of 30 years in favour of M.P. Education Society by projecting himself as representative of all the co-owners. It is further alleged that the M.P. Education Society is being run by respondent no.2, who is the brother of respondent no.1.

"Lease" has been defined under Section 105 of Transfer of Property Act, which reads as under :

"A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. Lessor, lessee, premium and rent defined.—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or

other thing to be so rendered is called the rent”.

“Rights and Liabilities” of lessor and lessee have been defined under Section 108 of Transfer of Property Act, which reads as under :

108. Rights and liabilities of lessor and lessee.—In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:—

(A) Rights and Liabilities of the Lessor :

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover;

(b) the lessor is bound on the lessee’s request to put him in possession of the property;

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption. The benefit of such contract shall be annexed to and go with the lessee’s interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

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(B) Rights and Liabilities of the Lessee :

(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease;

(e) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void: Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision;

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is

bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor;

(g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor;

the lessee may 1[even after the determination of the lease] remove, at (h)any time 2[whilst he is in possession of the property leased but not afterwards] all things which he has attached to the earth; provided he leaves the property in the state in which he received it;

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them;

(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease; Nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee;

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest;

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf;

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or

agents, he is bound to make it good within three months after such notice has been given or left;  
(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor;  
(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell 3[or sell] timber, pull down or damage buildings 3[belonging to the lessor, or] work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto;  
(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes;  
(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property".

Thus, it is clear that whenever the property is leased out then, the lessee is entitled to enjoy the possession of the property without any interruption, provided he pays the rent regularly and performs the contract binding on him. Therefore, whenever the lease is granted, then lessor or owner of the property would be deprived of the possession of the property subject to fulfillment of terms of contract by the lessee. If the facts of this case are considered in the light of the provisions of Section 105 and 108 of Transfer of Property Act, it would be clear that the complainant has been deprived of enjoying the fruits of the property.

Under these circumstances, the court below was not right in holding that by making false declaration in the lease deed, rights of co-owners have not got adversely affected. At least they would be deprived of their right to enjoy the property. Therefore, this court

is of the view that the court below while discharging the respondents for offence under Sections 420, 467 and 468 of IPC, has not appreciated the effect of false declaration made in the written lease deed executed by the respondent no.1 in proper perspective.

Under these circumstances, the order dated 14.5.2012 is set-aside. The matter is remanded back to the Court of Tenth ASJ, Gwalior for rehearing the parties on the question of framing of charge.

Accordingly, this revision succeeds and is hereby allowed to the extent as mentioned above.

Rks.

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