

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

M.Cr.C. No.5580/2012

Kundanlal Jain and others

Vs.

Virendra Singh Solanki

Shri C.L. Yadav, learned Senior Counsel with Shri Avinash Yadav, learned counsel for the applicants.

Shri R.R. Bhatnagar, learned counsel for the respondent.

ORDER

(Passed on 19/08/2015)

This application is filed under section 482 Cr.P.C. for quashment of private complaint filed by the respondent against the applicants on 23.05.2012 and order of the learned Judicial Magistrate First Class, Alot in Criminal Case No.244/2012 dated 23.05.2012 whereby the learned Judicial Magistrate took cognizance of offence against the accused Nos.4, 5, 6 and 7 arraigned in the complaint under sections 420, 467 and 468 of IPC and issued process against the

accused persons. The accused Nos.5, 6 and 7 arraigned in the complaint are applicant Nos.1, 2 and 3 in the present petition under section 482 Cr.P.C. before this Court.

2. According to the applicants, a temple known as Shri Ram Mandir Khaki Ji is situated at Alot. The temple has some agricultural land which belongs to the deity. The Collector Ratlam issued an order dated 22.06.1989 and the land was recorded as belonging to the temple and Collector was appointed as Manager of the property. Initially, one Guru Bhagwandas Ji was Pujari of the temple and later on Mukunddas was appointed as Pujari by Sub Divisional Officer by order dated 06.06.1980. As per the allegation in the complaint, it is alleged that the land belonging to the temple was sold by Govindlal and Smt. Girjadevi, mother and father of Pujari Mukunddas to one Smt. Kamlabai on behalf of Mukunddas who was minor at that time. A civil suit was filed against Smt. Kamlabai challenging the sale deed in favour of her. This suit was dismissed on 20.02.1995. A criminal case at Crime No.263/1997 was also registered against Kamlabai, Govindlal and Girjadevi which was dismissed as abated after death of all the three accused persons named above.

Thereafter, applicant No.1 applied for mutation for revenue record on 21.12.2009. It is alleged that applicant No.1 has executed power of attorney in favour of applicant No.2-Dr. Shikhar Jain and on the basis of this power of attorney applicant No.2 executed a gift deed in favour of applicant No.3-Smt. Deepika Jain on 22.03.2010 alleging that the accused persons committed cheating and forgery, the complaint was filed.

3. Applicants further avert that the disputed land was purchased by Mahant Prayagdas Ji from one Haridas Harsamal on 17.07.1920. According to them, the land never belonged to the temple, but it was private property of Mahant Prayagdas Ji and after his death, the property was devolved upon his successor. This fact came up for consideration in the civil suit filed against Kamlabai, Govindlal and Girjadevi. After attaining majority Pujari Mahant Prayagdas also granted his consent to the sale deed in question in favour of Smt. Kamlabai by his mother and father.

4. The applicants assert that on the facts as stated above, this was purely a civil matter. There was no intention to cheat and no forgery was committed in execution of any document.

5. Learned counsel for the respondent opposes the application and requests that the order passed by the learned Magistrate be confirmed.

6. The moot question in this matter is whether the disputed land belong to the temple Ram Mandir Khaki Ji or it was a private property of Mahant Prayagdas Ji as asserted by the present applicants.

7. So far as the forgery is concerned, the learned Magistrate has taken cognizance under sections 467 and 468 of IPC. The forgery is defined under section 463 of IPC. For committing forgery, the ingredients as stated in section 463 IPC must present. Making a false document is defined in section 464 IPC. Section 463 IPC defines forgery as making a false document with intent to cause damage or injury to person and section 464 IPC defines making of a false document the such false document should be made with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority he knows that it was not made, signed, sealed or executed, or affixed.

8. Applying the definition as stated above in the present

case, the alleged sale deed in favour of Kamlabai was not a forged document, it may be document without authority, if it is proved that original owner Mahant Prayagdas Ji had no authority to sale the property as it belongs to the temple and similarly, all the subsequent document like power of attorney and gift deed in favour of applicant No.3 are also not forged or false documents.

9. In this view of the matter, in the present case, no charges under sections 467 and 468 are made out. So far as the offence under section 420 IPC is concerned, there should be an intention to cheat from the very inception. Even if it is proved that the original owner had no authority to sale the property, it cannot be said that the present applicants or the original owner and the purchaser Kamlabai had any intention to cheat anybody. However, if in a civil suit, it is proved that the land belonging to the temple, was sold to Kamlabai with intention to cheat, then a criminal complaint can be filed.

10. However, at this stage, this appears purely a civil matter and no prima facie case is made out under sections 420, 467 and 468 IPC. In this view of the matter, the application under section 482 Cr.P.C. is allowed. The impugned order

passed by the learned Magistrate in criminal case No.244/2012 dated 23.05.2012 is set aside. The applicants are discharged from charge under sections 420, 467 and 468 of IPC.

11. With these observations and directions, this M.Cr.C. Stands disposed of.

**(ALOK VERMA)
JUDGE**