

IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

(SB: Hon'ble Mr. Justice Alok Verma)

CRR No.460/2015

Anil Kumar Gaubhuj

Vs.

State of MP

Shri Piyush Mathur, learned Sr. Counsel with Shri Akash
Vijayvargiya, counsel for the applicant
Shri Raghuv eer Singh Chouhan, learned GA for the respondent /
State.

JUDGMENT

(Passed on this 6th day of May, 2015)

This criminal revision under section 397 read with section 401 of Cr.P.C. is directed against the order passed by learned Additional Sessions Judge, Susner, District – Shajapur in Sessions Trial No.18/2014 dated 16.03.2015 by which learned Additional Sessions Judge framed charges against the present applicant under sections 467, 468, 471 and 120-B of IPC.

The relevant facts giving rise to this revision are that complainant Rajendra Khandelwal filed a written complaint against

present applicant alongwith other co-accused, on which Crime No.128/2014 was registered under sections 420, 467, 468 and 471 of IPC. According to the complainant, the accused prepared a forged agreement relating to survey no. 158/4 area 1.045 hectare, survey no.343/2 area 0.178 hectare and survey no.344/1/1 area 1.280 hectare belonging to the complainant. Such forged agreement was used against the complainant in various courts. On this complaint, after investigation, charge-sheet was filed by Police Station – Nalkheda, District – Agar (Malwa) on 16.12.2014. By the impugned order, learned Additional Sessions Judge framed charges against the present applicant. Aggrieved by which this revision has been filed.

According to the present applicant, he was working as notary public and in that capacity, he registered the alleged forged agreement on serial no.313. The agreement was purported to have been entered into between Tulsiram and Ramesh Gir. The stamp was purchased by Tulsiram and Ramesh Gir from the stamp vendor Devendra Singh Sengar. The date of purchase entered on the stamp was 13.08.2010 and it was registered by the present applicant on 30.10.2010. According to the applicant, under section 8 of the Notaries Act, 1952, verifying, authenticating, certifying, attesting the execution of any instrument is included in the function provided under the Act.

Thereafter, in the complaint filed by the complainant, it was

stated that stamp was issued by government treasury on 27.11.2010 i.e. after it was registered by the present applicant. However, during the investigation, it was not taken into consideration by the Investigating Officer that number of stamp was N-757142 that is the number of the stamp on which the said agreement was executed but, in the complaint number was written as 757142. According to the applicant, under section 13, cognizance of any offence against notary public cannot be taken by the Magistrate unless the complaint is filed by the authorised officer. In Rule 13 of Notary Rules, 1956, procedure for conducting the enquiry against notary public has been provided for. This procedure was not followed in case of the present applicant.

Learned Additional Sessions Judge did not take these facts into consideration and passed the impugned order which is against the law. Also the applicant submits that original agreement was not seized during the investigation.

On these grounds mainly, the impugned order is assailed by the present applicant.

Counsel for the applicant placed reliance on the judgment of this Court in the case of **Munir Khan Pathan Vs. State of MP** reported in 1995 J LJ 704 in which it was held that words “any offence” under sub section (1) of section 13 of the Notaries Act relates to an offence under the Act offences punishable under any other penal laws are not

included, however, the Court observed in para 11 that :-

11. It is also important to note at this juncture that it is made necessary that notary should know each and every person, coming before him, for the purpose of swearing the affidavit, the work of swearing of affidavit before notary would not be done smoothly. Notary is not expected to know each and every person coming before him for swearing affidavit. He is required to depend on persons who are identifying such persons. The appointment of notary for the purpose of swearing the affidavit has been made, in my opinion, for the purpose of helping the cause of public. Identification of each and every person swearing affidavit before the notary is not practicable and possible. In my opinion that cannot be the intention behind appointing notaries for the purpose of swearing the affidavits.

However, in the case of **Kusum Ranjani Vs. State of Jharkhand** reported in 2014 SCC Online Jhar 43 the High Court of Jharkhand observed that offence under section 13 of the Act includes the offence under IPC and as such, the complaint by the authorised officer under section 13(1) of the Act is required. Applying the principles laid down in these judgments on the present case from the facts of the case, it is apparent that the document was only registered by the present applicant, who was acting in the capacity of notary public. In the statement of the complainant under section 161 of Cr.P.C. No overt act

is assigned to the present applicant except registration of the alleged forged agreement by him. It is admitted that no complaint as required by section 13(1) of the Act by the authorised officer was made in this case and in these circumstances, in the considered opinion of this Court, the cognizance taken against the present applicant is bad in law and the proceedings before learned Additional Sessions Judge, Susner, District – Shajapur in Sessions Trial No.18/2014 are liable to be quashed. Accordingly, the revision is allowed. The proceedings in the aforesaid sessions trial are quashed so far as it relates to the present applicant. The applicant is discharged from the charges under sections 467, 468, 471 and 120-B of IPC.

However, it is clarified that quashing of the criminal case qua the applicant shall not preclude the respondent from taking appropriate steps under section 13 of the Notaries Act if they so deem fit.

C.c. as per rules.

(Alok Verma)
Judge

Kratika/-