



IN THE HIGH COURT OF MADHYA PRADESH BENCH

AT GWALIOR

CR. R. Case.

164 / 2015

Jagdish Makhija S/o Late Shri Arjundas
Makhija , Age 56 year Occupation-
business R/o Samadhiya colony Lashkar
Gwalior

----- Applicant

V/s

1 - State of M.P. Through P.S. Hujrat Kotwali
Distt. Gwalior

-----Respondent


Surjay Bohre
Petition under section 397 Cr.P.C. of Criminal
Procedure Code arising out of the order dated
27/1/15 passed by Third Addtiional Session Judge
Gwalior (Shri Devraj Bohre) in case No. 544/14
S.T. whereby charge has been framed against the
accused under section 420,471, and 120B of IPC.
Copy of the order passed by trial Court and copy
of charge is annexed herewith and marked as
Annexure A/1 .

Apart from this petition neither any petition is
pending before this court nor before the Supreme
court.

*Attested
Surjay Bohre
Asst-Registrar*



Amendment carried out
as per Court order
dated 01.09.2015 S 2-


Sanjay Bahirani

Pankaj sharma s/o Shri
Ram Bhajan Sharma
Registrar office Maharaj Bada
Lashkar Gwalior

Petition

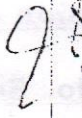
Procedure

27/1/15

Gwalior (S)

S.T. where

Attested


Asst. Registrar

ANNEXURE-C

HIGH COURT OF MADHYA PRADESH

CASE No. OF 20

ORDER SHEET (Continuation)

Date & S. No. of the order	Order
	<p>(Jagdish Makhija vs. State of M.P.) <u>Cr.R. No. 164/2015</u></p> <p><u>18.01.2016</u></p> <p>Shri Sanjay Gupta, counsel for the applicant. Shri B.P.S Chauhan, Public Prosecutor for the respondent No. 1-State. None for respondent No. 2 though served.</p> <p>Heard the learned counsel for the parties.</p> <p>The applicant has challenged the order dated 27/01/2015 passed by the 3rd Additional Sessions Judge, Gwalior, whereby, charge of offence under section 120-B, 420 r/w section 34 of IPC, 471 r/w section 34 of IPC and 506 Part- II of IPC were framed against the applicant in S.T. No. 544/2014.</p> <p>Facts of the case, in short, are that one Hemant had tried to sale the property of the applicant which is situated at Samadhiya Colony, Gwalior to one Yogesh Katri by showing that Hemant had power of attorney. In that dealing Manoj has participated as mediator. When the sale deed was produced for registration, the Sub Registrar had found that the power of attorney was fake and, therefore, he sent the FIR to the SHO, Hujrat Kotwali, Dist. Gwalior. After registration of the case, on the request made by Yogesh Khatri, the police added name of the applicant as accused in the case that he was also involved in the conspiracy and, therefore, charge sheet was filed against the accused persons including the applicant.</p>



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	<p>Thereafter, the trial court heard the learned counsel for the parties and framed the charges against the applicant also for the offence as mentioned above.</p> <p>After considering the submissions made by learned counsel for the parties and looking to the facts and circumstances of the case, it would be apparent that the FIR was lodged by Sub Registrar Deed and Documents finding that fake power of attorney was prepared by Hemant, Manoj and Nagendra Hasa Ji for the transaction in which Yogesh has to purchase the land. Since Yogesh Khatri was purchaser it was for him to get the property at lessor price due to forgery of power of attorney and therefore, erroneous approach was taken by the police thinking that Yogesh was victim. If Yogesh has stated that the applicant has also received some money then there was no need to the applicant to execute a fake power of attorney and in that case no offence will be made out against any of the accused persons because in that case the entire transaction would have became a civil transaction. Under these circumstances, if entire documents collected by the prosecution are considered then it would be apparent that the applicant Jagdish was victim in whose name power of attorney was prepared in favour of Hemant. It appears that the prosecution, to loose the evidence of other persons made the applicant Jagdish as an accused and relieved the</p>

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ORDER SHEET (Continuation)

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	<p>purchaser Yogesh Khatri. The trial court shall have every right to consider the matter of Yogesh Khatri, if any application is moved under section 319 of Cr.P.C., but looking to the evidence collected by the prosecution no role of the applicant is established. On the contrary, according to the FIR he was victim in the case.</p> <p>It is settled view of the Apex Court that in absence of any rebuttal and by evidence collected by the prosecution, and if the accused can be convicted of any particular offence then charge of that offence should be framed. In the present case, except allegation made by Yogesh Khatri there is nothing against the applicant. If he was involved in the sale of the property, there was no need to the applicant to prepare a fake power of attorney. Hence, there is no case in which it may be said that the applicant cheated anyone or he was involved in the conspiracy of forgery. However, if he was interested to sale the land to Yogesh Khatri then he should have executed the sale deed directly.</p> <p>Under these circumstances, if collected evidence of the prosecution is examined then prima facie no case is made out against the applicant. Trial court has framed charges against the applicant without any basis, especially when the Sub Registrar, Deed and Documents has found that forgery of power of attorney was done to cause loss to the applicant</p>



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Jagdish. Under these circumstances, the impugned order passed by the Third Additional Sessions Judge, Gwalior is contrary to the settled principle of law and it is almost perverse.

On the basis of aforesaid discussions, this is a good case in which revisionary power of this Court should be exercised in favour of the applicant.

Consequently, this criminal revision filed by the applicant Jagdish Makhija is hereby allowed. The impugned order dated 27/01/2015 passed by the Third Additional Sessions Judge, Gwalior, so far as it relates to framing of charge against the applicant Jagdish Makhija is concerned is hereby set aside. The applicant Jagdish Makhija is discharged from the charges appended by the trial court.

Copy of this order be sent to the trial court for information and compliance that, the proceedings of the case shall be dropped against the applicant-Jagdish Makhija.

Certified copy as per rules.

(N.K.Gupta)
Judge

Durgekar*

- 1) Application received on 28/1/16
- 2) Application filed on 28/1/16
- 3) Application filed on 28/1/16
- 4) Application filed on 28/1/16
- 5) Application filed on 28/1/16
- 6) Application filed on 28/1/16
- 7) Application filed on 28/1/16
- 8) Application filed on 28/1/16
- 9) Application filed on 28/1/16
- 10) Application filed on 28/1/16

- 11) Application filed on 28/1/16
- 12) Application filed on 28/1/16
- 13) Application filed on 28/1/16
- 14) Application filed on 28/1/16
- 15) Application filed on 28/1/16
- 16) Application filed on 28/1/16
- 17) Application filed on 28/1/16
- 18) Application filed on 28/1/16
- 19) Application filed on 28/1/16
- 20) Application filed on 28/1/16

Head Copy

Copy

CERTIFIED TO BE A TRUE COPY

Section Officer
Madhya Pradesh High Court
Gwalior Bench, Gwalior
Certified u/s 76 of the Evidence Act

Checked & Found Correct
A.H.G.