

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 23 of 2023

V.S. Gopal Mudaliyar @ V.S. Gopal Mudaliya, aged about 56 years, son of Late V.S. Mudaliyar, Resident of Indraprasth Colony, Main Road, Gamharia, P.O. and P.S. -Adityapur, District -Seraikella -Kharsawan.

.... Petitioner

Versus

1. The State of Jharkhand
2. Chandra Kant Sharma, aged about 59 years, son of Shyamnath Sharma, Resident of D-222, Near Shiv Kali Mandir, Khuntadih, Sonari, Jamshedpur, P.O. and P.S. -Sonari, District -East Singhbhum.

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

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For the Petitioner	: Mr. R.S. Mazumdar, Sr. Advocate
	: Mrs. J. Mazumdar, Advocate
	: Mr. Rohan Mazumdar, Advocate
For the State	: Mr. Pankaj Kumar, P.P.
For the O.P. No.2	: Mr. Mahesh Kr. Sinha, Advocate

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By the Court:-

1. Heard the parties.
2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C. with a prayer to quash the entire criminal proceeding including the order dated 11.07.2022 in connection with Complaint Case No. 915 of 2021 whereby and where under the learned Chief Judicial Magistrate, Seraikella has found prima facie case for the offences punishable under Sections 406/420/468 of the Indian Penal Code.
3. The allegation against the petitioner is that the petitioner being the power of attorney holder of Sri Umashankar Sharma and Sanju Devi in respect of a land which is claimed to have been

purchased by the complainant. The complainant claimed that the mutation of the land was done in his name and he used to pay the tax but in February, 2019, the petitioner with the co-accused stopped the complainant from constructing the house over the said land. On the basis of the complaint of the complainant, a proceeding under Section 144 Cr.P.C. was initiated by the S.D.O. but in-spite of the said proceeding, the petitioner and the co-accused started constructing the house over the said land and on being protested by the complainant, they drove the complainant from the place of occurrence land after threatening him. It is alleged that the petitioner and the co-accused person have forcibly occupied the land of the complainant and residing over the same with their family members and in a fraudulent manner have got the land mutated in their name and also obtained the water and electric energy connection on the basis of such forged mutation. On the basis of the complaint, statement of the complainant under solemn affirmation and statement of the enquiry witnesses, the learned Chief Judicial Magistrate, Seraikella has taken cognizance for the offences punishable under Section 406/420/468 of the Indian Penal Code.

4. It is submitted by the learned senior counsel for the petitioner that the petitioner in capacity of power of attorney holder of Umashankar Sharma and Sanju Devi has only executed sale deed in favour of co-accused -Jai Prakash Gupta and consequent upon that the said land has been lawfully mutated in the name of Umashankar Sharma and Sanju Devi which suggests that

Umashankar Sharma and Sanju Devi are in possession of the land and not the petitioner. It is next submitted that apart from mutation, the said land was demarcated by the Circle Amin vide Demarcation Case No.5/2006-2007 and 6/2006-2007 on the application of Sri Uma Shankar Sharma and Smt. Sanju Devi. It is then submitted that though the complainant also filed Original Title Suit No. 86 of 2019 but the petitioner has not even been impleaded as a party and though the complainant claims right, title and interest against Uma Shankar Sharma and Sanju Devi in the said suit and recovery of possession in case he is dispossessed during the pendency of the suit but no injunction has been granted in favour of the complainant in that suit nor the complainant has amended his plaint showing that in the meanwhile, he has been dispossessed from the suit land. It is next submitted that this complaint case is nothing but a malicious proceeding only for wrecking vengeance against the petitioner, therefore, continuation of this criminal proceeding will amount to abuse of process of law.

5. The learned senior counsel for the petitioner relied upon the Judgment of Hon'ble Supreme Court of India in the case of **Usha Chakraborty and Another Versus State of West Bengal and Another**, reported in **2023 0 Supreme (SC) 76**, and submits that the fact that the complainant has suppressed the filing of the said Original Title Suit No. 86 of 2019 in the complaint by not mentioning the number of the suit and the court in which the same was filed and that the suit was not filed against the

petitioner; and the same has been done in a calculated manner to suppress the material facts which amounts to abuse of process of law.

6. It is lastly submitted that the entire criminal proceeding including the order dated 11.07.2022 in connection with Complaint Case No. 915 of 2021 whereby and where under the learned Chief Judicial Magistrate, Seraikella has found prima facie case for the offences punishable under Sections 406/420/468 of the Indian Penal Code be quashed and set aside.
7. The learned Public Prosecutor and the learned counsel for the opposite party no.2 on the other hand vehemently opposes the prayer for quashing the entire criminal proceeding including the order dated 11.07.2022 in connection with Complaint Case No. 915 of 2021 whereby and where under the learned Chief Judicial Magistrate, Seraikella has found prima facie case for the offences punishable under Sections 406/420/468 of the Indian Penal Code and submits that the allegations made in the complaint, statement of the complainant on solemn affirmation and statement of the inquiry witnesses is sufficient to constitute all the three offences punishable under Section 406/420/468 of the Indian Penal Code. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.
8. Having heard the submissions made at the bar and going through the materials in the record, it is pertinent to mention here that so far as the offence punishable under Section 468 of the Indian Penal Code, the essential ingredients to constitute the

offence punishable under Section 468 of the Indian Penal Code, are as under:

- (i) The accused prepared a false document or electronic record.
- (ii) He did it for the purpose of fraud or deceit; as has been held by the Hon'ble Supreme Court of India in the case of **Indian Bank v. Satyam Fibres (India) (P) Ltd.**, reported in (1996) 5 SCC 550 :AIR 1996 SC 2592.
- (iii) The intention of the forgery should be that the forged document or electronic record is to be used for the purpose of forgery.
- (iv) There should be forgery with particular intent, as has been held by the Hon'ble Supreme Court of India in the case of **Ram Narayan Popli v. Central Bureau of Investigation**, reported in (2003) 3 SCC 641.

9. Now coming to the facts of the case there is absolutely no allegation against the petitioner as to which false document or electronic record has been prepared by him nor there is any allegation that any such document was prepared dishonestly or fraudulently by the petitioner and in the absence of any offence of any forgery, certainly the offence punishable under Section 468 of the Indian Penal Code which is an aggravated form of offence of forgery; as the offence punishable under section 468 of the Indian penal code is made out only when the forgery is committed

intending that the forged documents shall be used for cheating, cannot be made out.

10. So far as the offence punishable under Section 420 of the Indian Penal Code is concerned, the essential ingredients of the said offence are as follows :-

I) There should be fraudulent or dishonest inducement of a person by deceiving him.,

II) (a) The person so induced should be intentionally induced to deliver any property to any person or consent that any person shall retain any property or,

(b) The person so induced to do anything which he would not do or omit if he were not so deceived

and

(III) In cases covered by the second part of clause (a), the act or omission should be one which caused or likely to cause damage or harm to the person induced in body, mind or property

As has been held by the Hon'ble Supreme Court of India in the case of **R.S. Nayak v. A.R. Antulay and Another**, reported in **(1986) 2 SCC 716**

11. Now coming to the facts of the case, there is no allegation against the petitioner of inducing either the complainant or anyone else or deceiving him. In the absence of these essential ingredients to constitute the offence punishable under Section 420 of the Indian Penal Code, this Court has no hesitation in holding that the

offence punishable under Section 420 of the Indian Penal Code is not made out against the petitioner.

12. So far as the offence punishable under Section 406 of the Indian Penal Code is concerned, the following ingredients are to be established :-

- (i) Mens rea
- (ii) There must be dishonest misappropriation or conversion to one's own use, or use in violation of a legal direction or of any legal contract
- (iii) The accused dishonestly used or disposed of the property

13. Now coming to the facts of the case, there is no allegation of entrustment of any property or the petitioner having dominion over a property belonging to the complainant or any of the aggrieved person. Under such circumstances, this Court is of the considered view that offence punishable under Section 406 of the Indian Penal Code is not made out even if the contents of the complaint, statement of the complainant under solemn affirmation and statement of the inquiry witnesses are considered to be true in their entirety.

14. Because of the discussions made above, this Court is of the considered view that since none of the offences for which the learned Chief Judicial Magistrate, Seraikella has found prima facie case is made out against the petitioner, hence the continuation of this criminal proceeding against the petitioner will amount to abuse of process of law. Hence, this is a fit case where the entire criminal proceeding including the order dated 11.07.2022 in

connection with Complaint Case No. 915 of 2021 whereby and where under the learned Chief Judicial Magistrate, Seraikella has found prima facie case for the offences punishable under Sections 406/420/468 of the Indian Penal Code be quashed and set aside qua the petitioner.

15. Accordingly the entire criminal proceeding including the order dated 11.07.2022 in connection with Complaint Case No. 915 of 2021 whereby and where under the learned Chief Judicial Magistrate, Seraikella has found prima facie case for the offences punishable under Sections 406/420/468 of the Indian Penal Code is quashed and set aside qua the petitioner.
16. In the result, this criminal miscellaneous petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 17th January, 2024
AFR/Sonu-Gunjan/-