

**Smt.Deepika and Ors Vs. State and Anr**

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**Court :** Rajasthan Jodhpur

**Decided On :** Dec-17-2015

**Appellant :** Smt.Deepika and Ors

**Respondent :** State and Anr

**Judgement :**

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR. :::

JUDGMENT

::: S.B. Criminal Misc. Petition No.3162/2014 Smt. Deepika & Ors. vs. State of Rajasthan & Anr. Date of Judgment ::

17. 12.2015. HON'BLE MR. JUSTICE SANDEEP MEHTA Mr.Pradeep Shah, for the petitioners. Mr.VS Rajpurohit, PP, for the respondent no.1 State. Mr.Vineet Jain, for the respondent no.2. ... BY THE COURT :

1. Heard learned counsel for the parties.

2. By way of the instant misc. petition, the petitioners have approached this Court seeking quashing of the order dated 28.9.2013 passed by the learned Judicial Magistrate No.1 (North), Udaipur in connection with F.R. case No.70/2008 emanating from FIR No.188/2008 registered at P.S. Hathi Pole, Udaipur, whereby, the learned Magistrate took cognizance against the petitioners for the offences under Sections 420 and 120B IPC.

3. Facts in brief are that the respondent no.2/ 2 complainant Hari Shanker Paliwal submitted a complaint in the concerned Court with the allegation that the accused Asgar Ali had sold his agricultural land to the complainant in the year 1968. Thereafter, he again fraudulently sold the same chunk of land to the present petitioner no.1 Smt.Deepika director of M/s. Chirag Propmart Pvt. Ltd. and got executed a registered document for such sale. The complaint was forwarded to P.S. Hathi Pole, Udaipur for investigation where FIR No.188/2008 was registered for the offences under Sections 420 and 120B IPC against the petitioners. After thorough investigation, the Investigating Officer came to a conclusion that Asgar Ali had sold his agriculture land to the complainant way back in the year 1968. Concealing the said fact, Asgar Ali again sold the same land to petitioner no.1 Deepika by way of a registered sale deed and the petitioners no.2 & 3 Ashraf Ali and Vijay respectively stood as witnesses in the sale transaction. The purchaser Deepika & the witnesses Ashraf Ali and Vijay (the petitioners therein), were found innocent whereas Asgar Ali who was the perpetrator of the fraudulent sale transaction had already passed away earlier and thus, a FR was submitted in the Court owing to the death of the sole accused Asgar Ali, person responsible for the offence. The respondent no.2/complainant submitted a protest petition in the trial Court and recorded evidence in support thereof. The trial Court, by its order dated 28.9.2013 proceeded to take cognizance of the offences under Sections 420 and 120B IPC and summoned the petitioners as accused in the case, upon which, the instant misc. petition has been preferred on behalf of the petitioners seeking quashing of the above order and all subsequent proceedings sought to be taken thereunder.

4. I have heard & considered the arguments advanced at bar and have gone through the material available on record as well as the impugned order.

5. On the face of record, the impugned order does not stand to scrutiny and cannot be sustained. As per the highest allegation of the complainant, the khatedar Asgar Ali executed a second sale deed of his land in favour of the petitioner Deepika whereas, the land had already been sold to the complainant way back in the year 1968. Even if the said allegation is taken to be true on its face value, then also keeping in view the principles enshrined by the Honble

Supreme Court in the case of Mohd. Ibrahim vs. State of Bihar reported in (2009) 8 SCC751 apparently, the person cheated, if any, would be the subsequent purchaser. Needless to say that the title of immovable property can only be transferred by a person having such title. As Asgar Ali had already transferred the title of the property to the respondent no.2/complainant by way of a registered sale deed way back in 1968, he did not retain even a semblance of title or ownership over such property and was having no authority to sell it again. Thus, even if he executed a subsequent registered sale deed for such property, no adverse effect was brought around on the title of the complainant which remains unchallenged despite the second sale transaction which is just a farce. The loser, if any, would be the subsequent purchaser and not the complainant. The trial Court, while passing the order dated 28.9.2013 observed that certain recitals in the sale deed reflected that the subsequent purchaser i.e. the petitioner Mrs. Deepika was aware of the earlier sale. Even if it is so, then also it is she who would stand to lose by the transaction. If she purchased the property knowing that it had been sold earlier then she would be precluded from even seeking any remedy against the seller in the Court of law. Even as per the admitted case of the complainant, the petitioner no.1 Deepika did not make him to part with any valuable security or property by giving any fraudulent inducement so as to invoke the offence under Section 420 IPC. So far as the petitioners no.2 and 3 are concerned, they stood witnesses in the registered deed executed by Asgar Ali and thus, by no stretch of imagination, they can be said to be persons who cheated the complainant or hatched a conspiracy for such offence. The ratio of the judgment rendered by the Honble Supreme Court in the case of Mohd. Ibrahim (supra) squarely covers the controversy at hand and the petitioners have wrongly been summoned to face prosecution for the offences under Sections 420 and 120B IPC. As a consequence of the above discussion, this Court has no hesitation in concluding that allowing the petitioners prosecution for these offences would be nothing short of a gross abuse of process of law and the same deserves to be quashed.

6. Resultantly, the instant misc. petition deserves to be and is hereby allowed. The impugned order dated 28.9.2013 passed by the learned Judicial Magistrate No.1 (North), Udaipur taking cognizance against the petitioners for the offences under Sections 420 and 120B IPC and all subsequent proceedings sought to be taken

thereunder are hereby quashed.

7. Stay petition also stands disposed of. (SANDEEP MEHTA), J.

S.Phophaliya

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