

**Suresh Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/973544](http://sooperkanoon.com/973544)

**Court :** Rajasthan Jodhpur

**Decided On :** May-30-2012

**Appellant :** Suresh

**Respondent :** State

**Judgement :**

SB Criminal Misc. Petition No.1085/2012 Suresh. Vs. State of Rajasthan. (1) IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR. ::: JUDGMENT ::: S.B. Criminal Misc. Petition No.1085/2012 Suresh. vs. State of Rajasthan. Date of Judgment ::

30. May, 2012. HON'BLE MR. JUSTICE SANDEEP MEHTA Mr.Suresh Kumbhat, for the petitioner. Mr.KK Rawal, PP, for the respondent State. ... BY THE COURT : Heard learned counsel for the parties. The instant misc. petition has been preferred by the petitioner challenging the order dated 21.4.2011 passed by the learned Additional Sessions Judge, Sojat in revision whereby the order dated 8.2.2011 passed by learned Additional Chief Judicial Magistrate, Sojat in Criminal Case No.461/2005 has been modified and the charges framed against the petitioner have been altered from the offences under Sections 418, 419 and 420 r/w 34 IPC to the offences under Sections 120B, 447 and 467 r/w 109 IPC. Succinctly stated the facts necessary for the disposal of the instant misc. petition are that one Sayari filed a SB Criminal Misc. Petition No.1085/2012 Suresh. Vs. State of Rajasthan. (2) complaint in the Court of learned A.C.J.M., Sojat against the petitioner, Prakash and one Smt. Kanchan on 7.6.2005 alleging inter alia that

she was a widow belonging to the Scheduled Caste. She stated that her pattasud land and house was located in Sojat City. It was also averred in the complaint that the patta had been issued to her by the Municipal Board, Sojat as she was a landless lady belonging to Scheduled Caste. She further stated that she had constructed a house on half the portion of the pattasud land and remaining half portion was vacant. It was also stated that after her husband's death, she ran into financially difficult and thereafter, she started living at her father's house at Piplad. She further stated that her mother-in-law used to live in the half portion of her house. She further stated that taking benefit of her absence, the accused Kanchan and Prakash illegally and without her permission, created forged documents and sold half portion of the complainant's land to the petitioner and the petitioner raised a construction on the said portion of the land. She further stated that Kanchan and Prakash had no right to sell her property. The complaint was forwarded to the police under Section 156(3) Cr.P.C. where FIR No.159/2005 was registered and upon conclusion of the investigation, a charge-sheet was filed against Prakash, Kanchan and the SB Criminal Misc. Petition No.1085/2012 Suresh. Vs. State of Rajasthan. (3) petitioner Suresh for offences under Sections 418, 419 and 420 r/w 34 IPC. The learned Magistrate after hearing the charge arguments, proceeded to frame charges against the petitioner and the two co-accused for the offences under Sections 418, 419 and 420 r/w 34 IPC. The petitioner assailed the order framing charges by filing revision and the revisional court, whilst considering the revision filed by the petitioner has directed alteration of the charges framed by the learned trial court and has directed the learned trial court to frame charges against the petitioner and two other accused for the offences under Sections 120B, 447 and 467 r/w 109 IPC. Hence, the instant misc. petition has been preferred challenging the impugned orders. Assailing the orders impugned, learned counsel for the petitioner submitted that the orders passed by the learned trial court as well as learned revisional court are absolutely illegal and without jurisdiction. Twofold arguments have been advanced on behalf of the petitioner. Firstly, it is submitted that the agreement to sell is not a valuable security and thus, the offence under Section 467 IPC cannot prima-facie be applied to the admitted facts of the case. Secondly, it is submitted that the petitioner is a bonafide purchaser of the property in question. He purchased the property after paying the market value to the sellers

under SB Criminal Misc. Petition No.1085/2012 Suresh. Vs. State of Rajasthan. (4) the bonafide belief that they are the genuine owners of the property in question and thus, no prima-facie case is made out for framing charges against the petitioner for the above mentioned offences as he is a bonafide purchaser of the property. Per contra, learned PP has opposed the arguments advanced on behalf of the petitioner and has submitted that the order framing charge does not call for any interference by this Court. Upon consideration of the material available on record, it is manifest that two documents are available on the record of the case one is the document whereby the petitioner has been appointed as a power of attorney holder by Sayari and the another is the document whereby the property has been agreed to be sold by Sayri to the petitioner. In the agreement to sell, the fact regarding possession of the property having been given to the petitioner has been mentioned. The complainant has specifically alleged that both the documents are forged. The two co-accused Kanchan and Prakash have attested the agreement to sell. On consideration of the arguments advanced at bar and upon going through the material available on the record, it is evident that the complainant specifically came SB Criminal Misc. Petition No.1085/2012 Suresh. Vs. State of Rajasthan. (5) out with the case that she did not sell her property to the petitioner. The petitioner claims to have purchased the property through an agreement to sell. The agreement to sell specifically mentions the fact that the possession of the property has been given to the purchaser. In view of this fact, it is apparent that the document definitely falls within the category of a valuable security because the same purports to give possession of an immovable property to the purchaser. The patta which was issued to Sayari bears a specific caveat that the allottee cannot transfer the land in question. Thus, it is apparent that three accused persons connived together to usurp the land of the complainant and thereby created false documents for depriving the lady of her property. At this stage, the finding of the revisional court regarding the offences under Sections 120B, 447 and 467 r/w 109 IPC being made out against the accused persons, cannot be said to be without jurisdiction, perverse or illegal. Resultantly, the present misc. petition, being bereft of any force, is hereby rejected. Stay petition also stands rejected. (SANDEEP MEHTA), J.

S.Phophaliya

