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**IN THE COURT OF PRL. CIVIL JUDGE AND J.M.F.C.**  
**BHATKAL**

**Present**

**Sri. VINOD BALNAIK. B.A. LL.B.(Spl.),**  
**Prl. Civil Judge and JMFC, Bhatkal**

**C.C. No.: 1059/2019**

**Dated this 7<sup>th</sup> day of September, 2023**

**Complainant : State by Bhatkal Town Police Station**  
**(By Asst. Public Prosecutor)**

**V/S**

**Accused:**

1. Rashida Baiduri W/o Burhanuddin Basha  
A/a: 65 years,  
R/o: Siddique street,  
Susgadi village, Bhatkal.
2. Irshad Ahammed Gangavali  
S/o Mohammad Ibrahim Gangavali,  
A/a: 40 years,  
R/o: Shadvilla, Kidwai Road,  
Battakao, Susagadi village, Bhatkal.
3. Bibi Jubaida  
W/o Mohammed Ibrahim Gangavali  
A/a: 62 years,  
R/o: Shadvilla, Kidwai Road,  
Battakao, Susagadi village, Bhatkal.

4. Faqui Ismail Peerzade  
S/o Mohammad Saheb Peerzade  
A/a: 53 years,  
R/o: Bunder Road, Magdum Colony,  
Susagadi, Bhatkal.
5. Noorjahan Peerzade  
S/o Mohammad Peerzade,  
A/a: 59 years,  
R/o: Azad Nagar, Jaali, Bhatkal.
6. Khatija Kubra Sukham  
W/o Sayed Saleem,  
A/a: 50 years,  
R/o: Azad Nagar, Jaali village, Bhatkal.
7. Humaira W/o Jainulladdin  
A/a: 44 years,  
R/o: Sultan street, Bhatkal.
8. Abdul Rehman Peerzade  
S/o Mohammed Saheb Peerzade,  
A/a: 54 years,  
R/o: Venkatapura, Hindu colony,  
Bhatkal.
9. Ameer Hamza Peerzade  
S/o: Mohammed Saheb Peerzade,  
A/a: 49 years,  
R/o: Siddique street, Bhatkal.
10. Ahammad Mujamilla Peerzade,  
S/o Mohammed Saheb Peerzade,  
A/a: 54 years,  
R/o: Siddique street, Bhatkal.

11. Bawa Ammer Bantwal S/o Imam Bantwal  
A/a: 36 years,  
R/o: Nasiman street, Magdum colony,  
Bhatkal

**(A1 to 6, 8 to 10 By Sri.K.H.N., Advocate  
A7 by Sri. V.F.G., Advocate  
A11 by Sri.S.B.B., Advocate )**

**ORDER ON APPLICATION FILED BY THE COUNSEL FOR  
THE ACCUSED NO.7 U/SEC.239 OF CR.P.C.**

This is the application filed by the counsel for the accused No.7 to discharge accused No.7 from the offences Punishable U/sec.419, 420, 423, 465, 467, 468 R/w Sec.149 of IPC.

**2. The brief facts of the application is as under:**

The accused in the application stated that, the case arises from a private complaint filed by one Mabeeha Peerzade S/o Miran Peerzade alleging that the land comprised in Sy.No.262 measuring 02-00-08 [A-G-A] situated at Jaali Village. Further the accused with a common intention in order to grab and hoodwink the said property by forging her signature on 02-10-2012 got concocted a gift deed and transferred in favour of the complainant grandmother Smt. Mamajuni Kom. Mohammed Saheb Peerzade. Thereafter accused No.4 got transferred the said land in his favour through a gift deed and thereafter sold to accused No.11. Hence the complaint came to be filed

against the accused. Further contended that the document dated: 02-12-2012 if gift deed is a forged document, the accused No.7 is a party to this document and whether she is the signatory to the said document. This accused is neither the party nor she has signed the said document. Smt. Bibi Aysha, Mehruna, Misha, Mayassar @ Mubasira, Mehtab and Mamajuni are neither the accused nor has been cited as witness in the said case. Hence the case against this accused is not sustainable. The allegations are civil in nature. O.S.No.48/2015 and 24/2015 are pending before this Hon'ble Court and O.S.No.8/2017 is pending before the Hon'ble Senior Civil Judge, Bhatkal. The civil matter has been given the colour of the criminal nature. Hence Hence for these amongst the other grounds he prayed to allow the application.

**3.** On the other hand the learned APP has filed objection to said application with a contention that, the accused to take undue advantage moved an frivolous application contending that there is no role of them in this case. The police filed the charge sheet after detailed investigation. Hence prayed to reject the application.

**4.** Heard both sides. Perused the materials placed on record and perused the copy of GPA produced by

the learned APP and perused the citations produced by the counsel for accused No.7 which are :

1. ILR 2021 Kar.4291 passed by Hon'ble High Court of Karnataka in the matter of Sri. Sukesh N. and others V/s The State of Karnataka.
2. 2019(1) KCCR 543 passed by Hon'ble High Court of Karnataka in the matter of V. Nagabhushana and others V/s M/s. N.K. Constructions Bengaluru and another.

5. The following points arise for my consideration.

**Point No.1 :** Whether the accused No.7 made out grounds to discharge her from the case?

**Point No. 2 :** What order?

6. My answers to the above said points are as under:

Point No.1: **In the Negative.**

Point No.2: **As per final order.**

**for the following;**

**REASONS**

7. **POINT NO.1:** This is the charge sheet filed by the PSI of Bhatkal Town police station after conducting the thorough investigation with respect to alleged offences on the basis of private complaint filed by one Maseeha Peerzade and the said complaint is referred to the police station by this Court to conduct the investigation and submit the report. The complainant

in his complaint stated that, the accused No.1 to 10 created the fraudulent and bogus document in respect of 02-00-08 (A.G.A.) of land situated in Sy.No.262 of Jaali village by cheating and forging the signatures of the complainant and his mother and sisters and impersonated them in the alleged gift deed dated: 20-09-2012 and got transferred in the name of Mamajuni and thereafter in the name of accused No.4 and sold in favour of accused No.7 etc.,

**8.** When the case is posted for framing of charge the instant accused come up with this application to discharge her from the case as she is no signatory to the gift deed dated: 02-10-2012 but after careful perusal of General Power of Attorney this accused No.7 has given the GPA to one Fakki Ismail Peerzade on 23-03-2014 along with Mamajuni, Noorjahan, Bibi Jubaida, Rashida Baiduri, Khatija Kohra, Abdul Rehman and Ameer Hamza which goes to show that the said Fakki ismail along with this accused sold the 00-04-00 (A.G.A.) to one Bawa Ameer Bantwal i.e., accused No.11. Hence for this reasons the accused No.7 cannot be discharged at this stage. For this, this Court has relied upon decision reported in **(2008) 2 SCC 561** decided in the matter of **Onkarnath Mishra V/s State (NCT of Delhi)** wherein it is held that:

“At this stage court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At this stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offences alleged would justify the framing of charge against the accused in respect of commission of offences”.

Hence for the fore going reasons and the decision discussed supra, it prima-facie goes to show that, the accused No.7 cannot be discharged at this stage. Further the citation relied by the accused is not applicable to the facts and circumstances of the present case. Hence point No.1 answered in the **Negative**.

**9. POINT NO.2:** In view of Negative findings on point No.1, I proceed to pass the following:

**ORDER**

**The application filed by the  
Accused No.7 is hereby rejected.**

(Dictated to the Stenographer directly on the computer transcribed by him, corrected by me and then pronounced by me in open court on this the **7<sup>th</sup> day of September, 2023**).

**Sd/-**  
**(VINOD BALNAIK)**  
Prl. Civil Judge & J.M.F.C.,  
Bhatkal.