

KAUK310027342019



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.: 1061/2019

Dated this 10th day of July, 2023

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

V/S

Accused:

1. Bibi Jubaida
Kom. Mahammad Ibrahim Gangavali
A/a: 62 years,
R/o: "Shada Villa" Kidwahi Road,
Battaganv, Susgadi village, Bhatkal.
2. Fakki Ismail Peerzade
S/o Mahammad Saheb Peerzade,
A/a: 53 years,
R/o: Bundar Road, Mugdum colony,
Susgadi village, Bhatkal.
3. Noorjahan Peerzade
Kom. Mahammad Peerzade
A/a: 59 years,
R/o: Azad Nagar, Jaali Bhatkal.

4. Abdul Rehman Peerzade
Mahammad Saheb Peerzade
A/a: 54 years,
R/o: Venktapur, Hindu Colony,
Bhatkal.
5. Ameer Hamza Peerzade
S/o Mahammad Saheb Peerzade,
A/a: 49 years,
R/o: Dr. Siddique street, Bhatkal.
6. Ahammad Mujameel Peerzade
S/o Mahammad Saheb Peerzade,
A/a: 54 years,
R/o: Dr. Siddique street, Bhatkal.
7. Ahammad Mudassir
S/o Mahammad Saheb Peerzade,
A/a: 43 years,
R/o: Dr. Siddique street, Bhatkal.
8. Rasheeda Baindoori
Kom. Buhranuddi Basha,
A/a: 65 years,
R/o: Dr. Siddique street,
Sugadi Village, Bhatkal.
9. Smt. Khatija Kubra
Kom. Sayed Saleem
A/a: 46 years,
R/o: Dr. Siddique street, Bhatkal.
10. Smt. Ayeshatul Humaira
Kom. Jainul Abiddin Farooque
A/a: 44 years,
R/o: Dr. Siddique street, Bhatkal.

11. Abubakkar Shaikh,
A/a: Major,
12. Abdul Jabbar S/o Usman Ghani Askeri,
A/a: Major,
R/o: House No.10/1, Askeri cross Road,
Anwar Garden, Bhatkal.

**(A1 to 6, 8, 9 By Sri.M.J.N., Advocate
A10 by Sri. V.F.G., Advocate
A12 by Sri. R.N.N., Advocate)**

**ORDER ON APPLICATION FILED BY THE COUNSEL FOR
THE ACCUSED NO.12 U/SEC.239 OF CR.P.C.**

This is the application filed by the counsel for the accused No.12 to discharge accused No.12 from the offences Punishable U/sec.417, 419, 420, 423, 465, 467, 468 and 471 R/w 149 of IPC.

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

The accused in the application stated that, the complainant one Mr. Meraj Peerzade has filed a private complaint with an allegation that the land bearing Sy No.477 hissa 5 measuring 00-02-00 [A-G-A] Kharab 00-00-12 remaining 00- 01-08 of Susgadi Village was purchased by him from his father as per sale deed dated 29-08-1996, as per which he was mutated in the RTC and was in possession of the said property. The RTC of this property was changed in the name of this Accused No. 12 and after getting relevant documents from the Revenue department and Sub-Registrar office,

he came to know that a gift deed [Hiba] dated 20-09-2012 was alleged to have been executed by him in favour of his grand-mother Smt. Mamajuni in respect of the said property, which deed has been attested by the Advocate & Notary, Mr. K. S. Rai, and that the said gift deed is a created and fraudulent document and that he has been impersonated before the Notary Public and that the Accused Nos.2, 3 and 11 have signed that deed as identifier of the executant and false identification of the complainant was made in that deed and thus the gift deed was created by the accused Nos. 1, 2, 3 & 11 with malafide intention to gulp down the property of the complainant and this entire foul play was played by Accused Nos. 1, 2, 3 & 11 to create such as fraudulent document. Further it is stated that the said Smt. Mamajuni died in June, 2014 and even the thumb impression of that Smt. Mamajuni was forged by the Accused Nos. 1, 2, 3 & 11. Further it is alleged that those accused persons 1, 2, 3 & 11 had got illegally transferred the RTC of the said property in the name of Smt. Mamajuni and thereafter the Accused persons 1 to 3 have colluded together and created the GPA in the name of Smt. Mamajuni in favour of the Accused Nos. 1 & 2 and on the strength the GPA they have created another registered gift deed alias hiba dated 26-03-2014 in

favour of accused No.1, in whose favour the RTC was mutated. It is further alleged that thereafter on 24-01-2015 all the accused persons except Accused No.11 have created the sale deed in favour of accused No. 12 and got that sale deed registered, as per which its RTC stood mutated in the name of Accused No.12.

3. That the entire allegations made in the complaint are revolving around Accused Nos.1, 2, 3 & 11 and this Accused No. 12 is only a bonafide purchaser, who has purchased the aforementioned property by paying his hard-earned money ie, for consideration. Nowhere it is alleged that this Accused has participated or taken any role in creating any such gift deed/Hiba either registered or unregistered or any such GPA and even as per complaint averments it is evident that this accused person has purchased the aforementioned property from the hands of Accused Nos.1 to 10 by paying the consideration amount and even it is reflected from the recitals of the said sale deed dated 24-01-2015 and it is clear that this accused person has purchased the said property by paying its value from Accused Nos. 1 to 10. That as such this accused person being a bonafide purchaser for consideration, has no reason to forge, create or manipulate any documents and even the complainant has also not

made any allegations regarding such forgery, creation or manipulation or any such documents against this accused person. That therefore by all means the inclusion of this accused in the complaint itself is with malafide intention and thereby to harass and humiliate him and thereby to make an attempt to extort huge amount from this accused by the complainant, as the complaint was filed by the complainant after coming to know of the fact that the said property was purchased by this accused person. That therefore this accused has no role to be played in such alleged forgery, creation or manipulation of any documents or signature and that therefore the involvement of this accused in the commission of the alleged offence itself is highly imaginary and improbable and as such even this Court cannot proceed against this accused to frame charge against him and even in the entire charge sheet, there are no incriminating materials or documents either to frame charge against this accused or to proceed against this accused for trial and as such this accused is totally an unwarranted person in the entire proceedings initiated in this case and as such from the very face of the complaint, it is certain that the charges made against this accused are groundless and as such even this Hon'ble Court cannot be expected to proceed against

this accused in this case and hence viewed from any angle, this accused is liable to be discharged from facing further proceedings in this case.

4. That such being case even the I.O. without conducting any proper investigation and even without perusing any of the documents or the complaint allegations in its proper perspective, has mechanically filed charge sheet without application of mind, though there were no reasons or grounds to included this accused person in this case or to file charge sheet against him, as there are no materials against him to file charge sheet by the I.O. That thus the I.O. has completely violated the legal principles without making proper enquiry or without conducting any sort of investigation and has mechanically filed the charge sheet in a most illegal manner and has filed a false charge sheet against this accused person without there being any materials or evidence regarding his role in the commission of such alleged offence and even without conducting any sort of proper enquiry or investigation in this matter. Further no piece of evidence was collected by the I.O. to show the involvement of this accused in the commission of any such alleged offence. So, no materials are available on record to prima facie show the alleged offence said to

have been committed by this accused person. So absolutely there are no sufficient grounds for proceeding against this accused person in this case by whatever stretch. Therefore, this accused person is entitled for discharge against the allegations made in the false and frivolous charge sheet filed against him, without any materials in this regard. Hence for these amongst the other grounds he prayed to allow the application.

5. On the other hand the learned APP has filed objection to said application with a contention that, the police have registered a case against accused U/Sec.417, 419, 420, 423, 465, 467, 468 and 471, R/W 149 IPC. At the time of registering of FIR accused did not move to superior court to seek relief. To take undue advantage at this stage of case they moved an frivolous application contending that there is no role of them in this case. The complaint allegations are exclusively criminal in nature and criminal conspiracy. The case is prima face case of filed only to delay. And to cheat complainant accused fabricated the forged document. All accused were colluded with each others to commit a crime. Hence for the these amongst the other grounds he prayed to dismiss the application.

6. Heard both sides. Perused the materials placed on record and perused the citations produced by the counsel for accused No.12 which are :

1. 2012 Part I MLJ (Criminal) 701 passed by Hon'ble High Court of Madras in the matter of Selvi J. Jayalalita and others V/s Central Buero of Investigation.
2. (2014)3 MLJ (Cri.) 310 passed by Hon'ble High Court of Madras in the matter of K. Sureshkumar V/s State.
3. (2010) Part 7 Supreme 271 Supreme Court passed by Hon'ble Supreme Court of India decided in the matter of P. Vijayan V/s State of Kerla and another.
4. AIR (SC) (1977) 1439 Supreme Court passed by Hon'ble Supreme Court of India decided in the matter of State of Karnataka V/s L. Muniswami and others and
5. (1997) 40 DRJ 101 passed by Hon'ble High Court of Delhi decided in the matter of Kalavati V/s of State.

7. The following points arise for my consideration.

Point No.1 : Whether the counsel for the accused No.12 made out

grounds to discharge accused
No.12?

Point No. 2 : What order?

8. 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

9. **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 Miraj Peerzada 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, he has purchased the 0-2-0 (A.G.A.) of land situated in Sy.No.477/5 of Susagadi village on 29-08-1996 and his name is mutated in the Revenue records. Thereafter the accused No.1 to 3 with a common intention created a forged gift deed on 20-09-2012 before the Notary public by forging his signature and accused No.2, 3 and 11 transferred the property in the name of Smt. Mamajuni W/o Mohammed saheb Peerzade. Thereafter accused No.1 to 3 created the forged GPA.

On 22-03-2014 they created Bogus gift deed and transferred the property in their name by creating forged sale deed and later sold the same in favour of present accused i.e., accused No.12, even though no authority to do so.

10. When the case is posted for issuance of summons to accused No.7, the present accused come up with this application with a contention that the I.O. has filed false charge sheet against him without their being any materials or evident regarding his role in the commission of alleged offence. There is no piece of evidence was collected by the I.O. to show the involvement of him etc., but after careful perusal of sale deed document bearing No.BTL-1-01213-2014-15 dated: 24-01-2015 executed by Smt. Jubaida W/o Ibrahim Ahammad Gangavali and 10 others in favour of him. Which goes to show that he is the purchaser of land measuring 0-1-8 (A.G.A.) in respect of Sy.No.477/5 situated in Susagadi village and the said property is alleged to have been gifted by Mehraj Meeran bin Mohiddin Saheb Peerzade in favour of Mamajuni on 20-09-2012 by forged gift deed. Now to trace out the same whether the alleged gift deeds are forged one are genuine one are to be decided by conducting full fledged trial. Unless and until this

accused cannot be said as he is a bonafide purchaser. It is well settled principle of law is that “The buyer be aware.” such being so the instant accused cannot be said as a bonafide purchaser as he ought to have verify the documents prior to purchase of property. Hence before conducting the full fledged trial in the instant case it is not proper to discharge the present accused i.e., accused No.12 from the case. 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.12 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.**

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

ORDER

The application filed by the counsel for the Accused No.12 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 **10th day of July, 2023**).

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