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**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC., HOSAPETE**

**PRESENT**

**SRI. PRASHANTH NAGALAPUR**

**B.B.A., LL.B (Hon's)**

**Prncipal Civil Judge & JMFC., HOSAPETE**

**Dated this the 13<sup>th</sup> day of February, 2025**

**C.C.No.37/2019**

**Complainant :** State by Police Sub Inspector, Town Police Station, Hosapete

**( By A.P.P.)**

**- Versus -**

**Applicants / Accused :**

1. Tulaja Naik son of Thavere Naik, Aged 30 years,
  2. Dharma Naik son of Kivuda Gangya Naik, Aged 49 years,
  3. Rama Naik son of Dharma Naik, Aged 75 years,
- All are R/o Thalebasapura Thanda, Hosapete Taluk.

**(By Sri K.Prahallad, Advocate )**

**ORDER**

1. The Police Sub Inspector, Hosapete Town Police Station, Hosapete has filed the charge sheet in the present case alleging that the accused have committed the offence U/Sec.120(b), 419, 420, 465, 471 read with Section 34 of IPC .

- 2.** The accused No.1 to 3/applicants have stated in the application that the police have registered false case against them. They have further stated that the Mariyammanahalli Police had registered Cr.No.127/2013 in respect of the disputed land bearing Sy.No.124/E measuring 2 acres 09 cents on the basis of complaint lodged by the father of the first informant herein. They have further stated that the Mariyammanahalli police filed B summary report in the said case, which came to be accepted by the Order of the Court dated 22.01.2015. They have further stated that the first informant or his father has not challenged the order accepting the B summary report before any appellate authority. They have further stated that two complaints cannot be filed under the Cr.P.C. against same persons for the same offences and therefore, they have sought an order to discharge them for the alleged offences.
- 3.** The learned APP has filed objections to the said application. It is contended that the charge sheet is filed in the present case on the basis of evidence collected by the Investigating Officer in relation to alleged cheating by personation, forgery etc. It is further contended that the land Sy.No.124/E was only measuring 1 acre 15 cents and was previously standing in the name of Dhanjya Naik son of Hanumanthappa, who is the grand father of the first informant. It is further contended that the accused herein, having knowledge that the said land belongs to the family of the first informant, have got mutated their name in respect of the land Sy.No.124/E of Thalebasapura Thanda and got changed the extent of the land from 1 acre 15 cents to 2 acres 09 cents and therefore, they have committed the offences. It

is further contended that there has been execution of the sale deed in respect of the above said land with false claims. Therefore, the prosecution has contended that the accused cannot be discharged for the alleged offences merely because there had been B summary report filed earlier in another case.

4. I have heard the arguments advanced by the counsel for accused No.1 to 3 Sri K.P, Advocate and learned APP. I have perused the charge sheet and documents sent along with it.

5. The following points arise for determination.

1) Whether the charges leveled against the accused are groundless ?

2) What Order ?

6. My answers to the above 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** :- The first informant/complainant Thippa Naik filed private complaint under Section 200 of Code of Criminal Procedure before this Court in P.C.9/2017. The said case was referred for investigation under Section 156(3) of Code of Criminal Procedure. After the investigation, the Investigating Officer has filed report under Section 173 of Code of Criminal Procedure alleging that the accused have committed the offences punishable under Section 120-B, 419, 420, 465, 468, 471 R/w 34 of Indian Penal Code. The Investigating

Officer has given summary of the case in Column No.17 of the report. It is pertinent to extract the said summary to understand the allegations that are leveled against the accused. The relevant portion of the Column No.17 reads as under :-

" ಸಾಕ್ಷಿ 1 ರವರ ತಾತನಾದ ಮೃತ ಧಂಜನಾಯ್ಕ ರವರ ಹೆಸರಿನಲ್ಲಿದ್ದ ಸರ್ವೆ ನಂ.124-E ನೇದ್ದರಲ್ಲಿದ್ದ 1 ಎಕರೆ 15 ಸೆಂಟ್ಸ್ ಎಕರೆಯನ್ನು ರಾಮಾನಾಯ್ಕರವರಿಗೆ ಯಾವ ರೀತಿ ಪಹಣಿ ಬಂದಿರುತ್ತದೆ ಅಂತ ಯಾವುದೇ ದಾಖಲಾತಿಗಳಿಲ್ಲ. ಮೃತ ಧಂಜನಾಯ್ಕ ರವರಿಂದ ಎ-03 ರಾಮಾನಾಯ್ಕರವರಿಗೆ ಮ್ಯುಟೇಶನ್ ಸಹ ಬದಲಾವಣೆ ಆಗಿರುವುದಿಲ್ಲವೆಂದು ಸಾಕ್ಷಿ 17 ಲಾವಣ್ಯ ಉಪ-ತಹಶೀಲ್ದಾರರು ಮರಿಯಮ್ಮನಹಳ್ಳಿರವರು ದಾಖಲಾತಿಗಳು ಕೊಟ್ಟಿದ್ದು, ನೇರವಾಗಿ ಎ-03 ರಾಮಾನಾಯ್ಕರಿಂದ ಮೃತ ತಾವರ್ಯಾನಾಯಕನಿಗೆ 2010-11 ನೇ ಸಾಲಿನಲ್ಲಿ ರಿಜಿಸ್ಟರ್ ಮತ್ತು ಮ್ಯುಟೇಶನ್ ಆಗಿರುತ್ತದೆ ಮತ್ತು ಆಕಾರ ಬಂದ್ ನಲ್ಲಿ ಡಯಗ್ಲೇಟ್ ನಲ್ಲಿ ಮತ್ತು ಹಾಲಿ ನಕ್ಷೆಯಲ್ಲಿ ಸರ್ವೆ ನಂ.124-E ನೇದ್ದರಲ್ಲಿ 1 ಎಕರೆ 15 ಸೆಂಟ್ಸ್ ಇದೆ ಅಂತ ಸಾಕ್ಷಿ-15 ಸುರೇಶ ಪರ್ಯವೇಕ್ಷಕರು ಹೊಸಪೇಟೆಯವರು ದಾಖಲಾತಿಗಳನ್ನು ನೀಡಿರುತ್ತಾರೆ.

ಆರೋಪಿ-03 ನು ಸರ್ವೆ ನಂ.124-E ನೇದ್ದರಲ್ಲಿದ್ದ 2 ಎಕರೆ 09 ಸೆಂಟ್ಸ್ ಜಮೀನು ತನ್ನದು ಅಲ್ಲವೆಂದು ತಿಳಿದು, ಎ-01 ಮತ್ತು ಎ-02 ರವರ ಸಂಗಡ ಒಳಸಂಚು ಮಾಡಿಕೊಂಡು ಸಾಕ್ಷಿ-1 ರವರ ತಾತ ಮೃತ ಧಂಜನಾಯ್ಕರವರ ಹೆಸರಿನಲ್ಲಿದ್ದ ಸರ್ವೆ ನಂ.124-E ನೇದ್ದರಲ್ಲಿ 1 ಎಕರೆ 15 ಸೆಂಟ್ಸ್ ಜಮೀನನ್ನು 2 ಎಕರೆ 09 ಸೆಂಟ್ಸ್ ಅಂತ ಹೆಚ್ಚಿಗೆ ಪಹಣಿಯಲ್ಲಿ ಸುಳ್ಳು ಸೃಷ್ಟಿ ಮಾಡಿ ಮತ್ತು ಸುಳ್ಳು ದಾಖಲಾತಿಗಳನ್ನು ಸೃಷ್ಟಿಸಿ ಜಮೀನಿನನ್ನು ಎ-01 ಮತ್ತು ಎ-02 ರವರ ಸಂಗಡ ಒಳಸಂಚು ಮಾಡಿಕೊಂಡು ಮೃತ ತಾವರ್ಯಾನಾಯ್ಕರವರಿಗೆ ಮಾರಾಟ ಮಾಡಿದ್ದು ನೊಂದಣಾಧಿಕಾರಿಗಳ ಕಛೇರಿಯಲ್ಲಿ ಎ-01 ತುಳಚ್ಚನಾಯ್ಕ, ಎ-02

ರವರು ಗುರುತು ಬಲ್ಲವರಂತ ಸುಳ್ಳು ಸಾಕ್ಷಿ ಸಹಿ ಮಾಡಿ ಸಾಕ್ಷಿ-01 ರವರಿಗೆ ಮೋಸ ಮಾಡಿರುತ್ತಾರೆ ಅಂತ ತನಿಖೆಯಲ್ಲಿ ಸಾಬೀತಾಗಿದ್ದರಿಂದ ಕಲಂ: 120 (B), 419, 420, 468, 471 ರ R/w 34 IPC ಪ್ರಕಾರ ದೋಷಾರೋಪಣ ಪತ್ರವನ್ನು ತಯಾರಿಸಿ ಮಾನ್ಯರಲ್ಲಿ ನಿವೇದಿಸಿದೆ”.

**8.** It is clear from the above summary that the land Sy.No.124/E measuring 1 acre 15 cents belonged to the grand father of the first informant i.e., Dhanjya Naik. The prosecution alleges that the land Sy.No.124/C measuring 2 acres 9 cents belongs to the accused No.3 and from 2001-02, there has been change in Sy.No.124/C as 124/E and extent as 1 acre 15 cents as 2 acre 9 cents. It is alleged that the accused No.3 being the owner of the land Sy.No.124/C had the knowledge that the land Sy.No.124/E does not belong to him, though there has been wrong mutation entries. It is further alleged that the accused No.1 to 3 with an intention to grab the property belonging to the family of the first informant, created the sale deed dated 24.09.2010. The Investigating Officer has come to the conclusion that there has been criminal conspiracy hatched by the accused No.1 to 3 to gain wrongfully by cheating by personation and forgery.

**9.** The Investigating Officer has produced the certified copies of Record of Rights pertaining to land Sy.No.124/C measuring 02 acre 09 cents and Sy.No.124/E measuring 01 acre 15 cents for the year from 1985 to 2000. The name of the grand father of the first informant Dhanjya Naik son of Hanumappa is appearing in the said documents. The name of the accused No.3 Rama Naik son of Dharma Naik is appearing in the Record of Rights pertaining to land Sy.No.124/C measuring 2 acres 9 cents. Therefore, the contention of the

prosecution that the land Sy.No.124/C measuring 1 acre 15 cents belongs to the family of the first informant and the land Sy.No.124/C belongs to the family of the accused No.3 is believable.

- 10.** The survey settlement akar bandh produced by the Investigating Officer indicates that the land Sy.No.124/C measures 2 acres 9 cents and the land Sy.No.124/E measures 1 acre 15 cents. In the present case, the accused No.3 has executed the sale deed in favour of the father of the accused No.1 i.e., Thavare Naik, conspiring with accused No.1 and 2. The said sale deed does not pertain to the land Sy.No.124/C measuring 2 acres 9 cents. It pertains to land Sy.No.124/E measuring 2 acre 9 cents, which is not correct as per the revenue records. The accused No.1 to 3 have allegedly got executed the said sale deed having knowledge that the land does not belong to the accused No.3 and thereby committed the alleged offences as per the conclusion arrived at by the Investigating Officer.
- 11.** The allegations made in the charge sheet are well supported by the documents sent along with it. The accused cannot contend that the charges leveled are groundless in the present case in my opinion. The contention raised by the accused are that the charges are groundless is unsustainable.
- 12.** The accused are specifically contending that the father of the first informant herein had lodged similar complaint against them in Cr.No.127/2013, in which B summary report was accepted by this Court and therefore, the prosecution of accused on the basis of same facts is

not permissible under law. Whether the acceptance of B summary report by this court on earlier occasion preclude the complainant/first informant in the present case from prosecuting against the accused is the question that arises.

**13.** No doubt, the complaint lodged by the father of the first informant on earlier occasion ended in filing of B summary report. This does not mean that the accused have been tried before the Court and found not guilty by the order of the Court. The acceptance of B summary report cannot be equated with acquittal of the accused after full fledged trial. The concept of double jeopardy is only applicable when a person is proposed to be tried before the Court for the same offence twice. Section 300 of Code of Criminal Procedure makes it clear that a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall not be liable to be tried again for the same offence. The above provision has its origin in Article 20(2) of the Constitution of India. No person can be prosecuted and punished more than once for the same offence as per the said Article. In the present case, the accused were not tried or prosecuted before this court for the alleged offences on earlier occasion. Therefore, the above principle cannot be made applicable to the case on hand.

**14.** The allegations made against the accused in the charge sheet and the documents sent along with it are sufficient to proceed against the accused in the present case. The accused have failed to establish the fact that the allegations made against them are groundless.

Therefore, the application filed by the accused under Section 239 of Code of Criminal Procedure has to be rejected. **Hence, I answer Point No.1 in the Negative.**

- 15. Point No.2** :- In view of the foregoing reasons, I proceed to pass the following :

**ORDER**

The application filed by the accused No.1 to 3 under Section 239 of Cr.P.C. is hereby rejected.

There is sufficient material to frame charge for the alleged offences.

[Dictated to the stenographer directly on the computer, corrected by me in computer, and then, pronounced by me in the open Court this the 13<sup>th</sup> day of February, 2025]

[ **Prashanth Nagalapur**]  
Principal Civil Judge & JMFC, Hosapete .