

**IN THE COURT OF MS. KHYATI GOYAL, PCS,
JUDICIAL MAGISTRATE IST CLASS, AMLOH
UID NO.PB0590**

CNR No:-PBFGA10019512020

COMI:-33/2020

Date of Inst:- 29.10.2020

Date order:-17.05.2024

Jai Parkash Gupta aged 55 years son of Shrui Makhan Lal son Shri Devi Sahaye, resident of 106, Shikha Apartment, I.P. Extention, Partparganj, Shakarpur, Delhi.

.....Complainant

Versus

1. Makhan Lal son of Shri Devi Sahaye,

2. Vijay Kuimar son of Shri Makhan Lal,

both residents of Rajasthan Iron Traders, Loha Bazar, Mandi Gobindgarh, Tehsil Amloh, District Fatehgarh Sahib.

.....Accused

(Complaint under Sections 420,464,465,467,468,471,34 IPC.)

Present:- Complainant with Sh. Sunil Kumar Garg, Advocate

ORDER:-

1. The complainant has filed this complaint under Sections 420, 464, 465, 467, 468, 471, 34 of Indian Penal Code against the accused persons on the allegations that accused No.1 is father and accused No.2 is real brother of complainant. Complainant is owner of property measuring 10 Biswa comprising of Khata No. 916/1382, khasra No. 276(3-16) to the extent of 10/76 share ie 10 Biswa as per jamabandi for the year 1991-92. Both accused No.1 & 2 being father and younger brother respectively approached complainant and stated that since complainant has been staying at Delhi NCR as such it was difficult for him to look after the property regularly and both accused requested complainant to allow them to use a part of abovesaid property of complainant for the purpose of their office for some time as licensee with the assurance that they shall vacate the same as and when asked by the complainant.

2. It has been averred in the complaint that after believing the representation made by accused, complainant permitted both the accused persons on license basis to use his property, with the condition that accused will vacate the said property of complainant as and when asked

by the complainant. Accused have no right, title or interest over the said property. Complainant has number of times requested the accused persons to vacate the abovesaid property but accused always put off the matter on one pretext or other.

3. It has been further averred that now in the month of August, 2020, accused No.2 Vijay Kumar started falsely claiming that he has purchased the abovesaid property from accused No.1 Makhan Lal. On inquiry, complainant has come to know that both the accused with the knowledge and consent of each other have prepared and fabricated a false, fake and fraudulent sale deed dated 27.12.1996 regarding the abovesaid property of complainant by illegal, dishonest means with the intention to cause wrongful loss and injury to the complainant for their own benefits. Said false sale deed has been apparently executed by accused No.1 Makhan Lal in favour of accused No.2 on the basis of some General Power of Attorney registered at wasika No. 1375 of 1996 purportedly issued by the complainant.

4. It has been also averred in the complaint that said alleged transaction of sale deed and execution of sale deed by Sh. Makhan Lal through General Power of Attorney registered at Wasika No.1375 of 1996

is totally false, fake, forged and fabricated document. Accused have made the abovesaid false sale deed dated 27.12.1996 regarding the valuable security of complainant which was given to accused only for use as licensee. Complainant also got issued and served a legal notice dated 13.08.2020 for revoking the license given to them to use the abovesaid property of complainant with immediate effect and also directing the accused to get the abovesaid documents cancelled in 10 days from the date of said legal notice. Accused sent a false and frivolous reply to the legal notice. Accused have committed the criminal act of making a false document, forgery and fabrication regarding the valuable security of the complainant and thus thereby have also cheated the complainant.

5. Hence the present complaint.

6. In preliminary evidence, complainant has examined Manzoor Ahmad Senior Clerk in the office of Sub Registrar-II Gaziabad as CW-1 who has proved letters Ex. C1 to C3, certified copy of General power of attorney vasika No. 1375 of 1996 Ex. C4.

7. Complainant has further examined Bhim Rattan, Registration clerk in the office of Sub Registrar Sadar-I Gaziabad as CW-2 who has

proved authorization letter Ex. C5, certified copy of General Power of Attorney vasika No. 1375 of 1996 with endorsement Ex. C6.

8. Complainant has also examined Navneet Kumar, Registration clerk, in the office of Sub Registrar-III Gaziabad as CW-3 who has proved authorization letters Ex. C7 and C8, certified copy of General power of attorney vasika No. 1375 of 1996 alongwith endorsement Ex. C9, copy of letter dated 06.12.2021 Ex. C10.

9. Complainant has then examined Raj Kumar Peon in the office of Sub Registrar-IV Gaziabad as CW-4 who has proved certified copy of General Power of attorney vasika No. 1375 of 1996 alongwith endorsement Ex. C12, copy of letter dated 06.12.2021 Ex. C13.

10. Complainant has next examined Gaurav Kumar, Junior Assistant in the office of Sub Registrar-V Gaziabad as CW-5 who has proved authority letter Ex. C14, certified copy of letter dated 03.12.2021 Ex. C15.

11. Complainant Jai Parkash himself stepped into the witness box as CW-6 and deposed on similar lines, as per the averments of the complaint and the same are not being repeated for the sake of repetition

and has proved copy of sale deed Ex. C16, copy of legal notice Ex. C17, reply Ex. C18.

12. Complainant has thereafter examined Hakam Singh Registration clerk in office of Sub Registrar Mandi Gobindgarh as CW-7 who has proved sale deed bearing vasika No. 1276 dated 27.12.1996 Ex. C16.

13. Complainant has lastly examined Maninderjit Singh Patwari as CW-8 who has brought summoned record ie jamabandi for the year 1981-1982.

14. Thereafter, counsel for complainant closed preliminary evidence after tendering documents ie certified copy of cheque referred and returned register Ex. C25, certified copy of statement of Krishan Singh clerk Ex. C26, certified copy of statement of Kulwant Singh cashier Ex. C27, certified copy of statement of Nazar Singh Ex. C28, certified copy of statement of Bikkar Singh Ex. C29, Ex. C30, Ex. C31 and Ex. C32, certified copy of peon book of Punjab and Sind bank Ex. C33, certified copy of statement of Devinder Singh Ex. C34.

15. Learned counsel for complainant has argued on the lines of complaint and same are not being reiterated for the sake of brevity.

16. Learned counsel for the complainant has placed reliance on the documents placed on record to show that despite revocation of license, accused did not vacate the property of complainant and instead created a false, fake and forged General Power of attorney dated 15.10.1996 and sale deed dated 27.12.1996 for which they had no right.

17. Hence Ld counsel for complainant prayed that accused be summoned under sections 420,464,465,467,468,471,34 of Indian Penal Code.

18. I have heard the learned counsel for the complainant and have perused the case file carefully and thoroughly.

19. It is a settled law that at the stage of summoning of accused, only a prima facie case has to be seen on the basis of evidence available on record. Reliance is placed on the Judgment of Hon'ble Supreme Court of India in **Prabhu Dutt Tiwari VS State of Uttar Pradesh and others [2018 (13) SCC 609]** wherein it has been held that *“at the stage of summoning of the accused on the basis of private complaint, all that is required is a satisfaction by the Magistrate that there is sufficient ground to proceed against the accused in the light of the records made available and the evidence adduced by the complainant.”*

20. In order to make out the offences for which summoning of accused has been prayed for by the complainant, the intention of accused has to be seen. In this regard reference is made to the deposition of CW-6 ie complainant Jai Parkash who has deposed that he has no concern or connection with the alleged general power of attorney wasika No. 1375 of 1996 and accused Makhan Lal has no legal right or authority to execute the alleged sale deed of his property on the basis of alleged power of attorney wasika No. 1375 of 1996. Perusal of complaint would reveal that present complaint has been filed by complainant in the year 2020. As per version of complainant, alleged power of attorney is of year 1996 and sale deed executed by accused No.1 Makhan Lal in favour of accused No.2 Vijay Kumar on 27.12.1996. A period of more than 14 years has elapsed but complainant kept mum regarding the power of attorney wasika No. 1375 of 1996.

21. The plea of complainant is that the alleged power of attorney does not bear his signatures. In this regard complainant has not examined any Hand-writing expert to prove the fact that signatures on power of attorney are not of complainant.

22. Moreover power of attorney registered at vasika No. 1375 of 1996 and sale deed dated 27.12.1996 are registered documents.

Complainant had got issued legal notice Ex. C17 to accused. Accused filed reply to said legal notice and reply is Ex. C18. In the reply to the legal notice, it has been stated by the accused that General power of attorney was executed between the parties in presence of marginal witnesses. Perusal of general power of attorney would reveal that marginal witnesses of abovesaid power of attorney are Kiran and Subash. These witnesses have not been examined by the complainant to disprove the general power of attorney. This cast doubt on the complaint of complainant.

23. Complainant has further stated that property was given to accused No.1 as licensee and it was oral settlement between the parties not written. However complainant has failed to prove this fact that property was given to accused No.1 as licensee in oral agreement.

24. Therefore, complainant has failed to show that there was any criminal intention on the part of accused to execute sale deed in fraudulent manner. Even otherwise, nothing has come on record on the part of complainant that he has filed any civil suit for declaration of sale deed and power of attorney as illegal, null and void.

25. In view of the aforesaid discussion, no prima facie case is made out to summon the accused under sections 420, 464, 465, 467,

468, 471, 34 IPC. Hence present complaint stands dismissed.
File is ordered to be consigned to record room after due compliance.

Pronounced on:-17.05.2024

Rakesh Kaushal JW-II

**Khyati Goyal, PCS
Judicial Magistrate Ist Class,
Amloh, UID No.PB0590**

Jai Parkash Vs. Makhan Lal & Ors

Present: Sh. Sunil Kumar Garg, counsel for complainant.

Arguments heard. Vide my separate detailed order of even date, complaint stands dismissed. File is ordered to be consigned to record room after due compliance.

Pronounced on:-17.05.2024

Rakesh Kaushal JW-II

Khyati Goyal, PCS
Judicial Magistrate Ist Class,
Amlah, UID No.PB0590