



**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE  
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

**CRIMINAL REVISION No. 4467 of 2022**

***PRATEEK KUMAR***

*Versus*

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

Shri Atishay Dhaker, learned counsel for the Petitioner .

Shri Suhas Pundlik, learned Govt. Advocate for the respondent/State.

Ms. Swati Sharma, learned counsel for the Respondent [R-2].

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**WITH**

**CRIMINAL REVISION No. 810 of 2023**

***VARDHMAN GADIYA***

*Versus*

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance**

Shri Atishay Dhaker, learned counsel for the Petitioner .

Shri Suhas Pundlik, learned Govt. Advocate for the respondent/State.

Ms. Swati Sharma, learned counsel for the Respondent [R-2].

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**Heard On: 23.07.2024**

**Delivered on:21.08.2024**

**ORDER**



Both the criminal revision petitions have been arising out of the same impugned order, hence both are being decided with this common order. For the sake of convenience, the facts are being taken from CRR No.4467/2022.

2. These petitions have been filed by the petitioners under Section 397 read with Section 401 of Cr.P.C. against the order of framing of charges against the petitioners under Sections 420, 468 of IPC, 1860 passed by Second Additional Sessions Judge, Mahidpur, District Ujjain in S.T No.11/2022 vide dated 02.11.2022.

3. As per the prosecution story, one Chand Mohmaad Kha Mevati was the owner and in possession of the Land bearing Survey No, 812/1 and 812/2 located at Village Ghosla, Tehsil Mahidpur, Dist. Ujjain, MP. After his death his Legal Heirs, namely, Jaitun Bee and Shankuran Bee D/o Chand Mohmaad Kha Mevati became the owner of the said Property. That, on 28.01.2009 Jaitun bee D/o Chand Kha Mevati sold the survey no. 812/2 to Prakashkuwar w/o Jaswant Singh vide registered sale deed dated 28.01.2009. And on 17.07.2009 Shakuran Bee D/o Chand Kha. Mevati sold the survey no. 812/1 to Hariram s/o Jairamji Jaat vide registered sale deed dated 17.07.2009. Applicant purchased the land bearing Survey No. 812/2 from Smt.' Prakeshkuvar w/o Jaswant Singh and Survey 812/1 from Hariram s/o Jairamji both located at Village Ghosla, Tehsil Mahidpur, Dist. Ujjain, M.P. vide registered sale deed dated 16.11.2009. thereafter Applicant executed registered Power of Attorney in favor of one Vardhman Gadiya s/o Amrutlal Gadiya (petitioner of CRA No.810/2023) to deal with the aforesaid property for the period commencing from 05.01.2012 to 04.01.2013. thereafter in the year 2012 Respondent no.02 Purchased the aforesaid property from Applicant



vide registered Sale Deed dated 29.12.2012. On 29.12.2012 Respondent no. 02 filed an Application for Mutation of his name in revenue records with respect to aforesaid property before the Ld. Tehsildar, Ghosla, Tehsil Mahidpur, Dist. Ujjain, MP. One Bherulal s/o Kanchan Singh raised objections before the Ld. Tehsildar in the mutation proceedings but the said Application was allowed by the Ld. Tehsildar vide its order dated 23.02.2013 and accordingly the name of Respondent no. 02 was mutated in revenue records with respect to the said Property. On 19.02.2013 Respondent no. 02 was added as a party to the ongoing Civil Suit No.65-A/2014 for Declaration of Title and Permanent Injunction on aforesaid property. The said Civil Suit was filed by Bherulal against Prateek Kumar and Others before the Civil Judge, Mahidpur, Dist. Ujjain, MP. which was Decreed by the Ld. Court on 27.04.2015.

4. Thereafter respondent no.02 filed an Appeal before the Ld. ADJ, Mahidpur, Dist. Ujjain, MP challenging the Order dated 27.04.2015 and the said Appeal was dismissed by the Ld. Court vide its order dated 13.08.2019. On 03/07/2018 a Complaint was filed by Respondent no.02 against the Applicant and other co-accused persons namely Vardhman Gadiya s/o Amrutlal Gadiya and Narendra Kumar s/o Sundarlal Nahar. It was alleged by the Respondent no. 02 in the said complaint that in the year 2012 he purchased a land bearing Survey No. 812/1 and 812/2 located at Village Ghosla, Tehsil Mahidpur, Dist. Ujjain, M.P. from Applicant vide registered sale deed dated 29/12/2012 and allegedly paid Rs. 10,00,000/- in lieu of sale consideration. It has been-further alleged by respondent no. 02 that the Sale Deed dated 29.12.2012 was executed by the co-accused Vardhman Gadiya as he was appointed as agent by the Applicant to deal with the said Property vide registered Power of Attorney dated 05.01.2012. It has been



further alleged that on 19.02.2013 Respondent no. 02 received summons of Court whereby he was added as a party.

5. It is alleged that the present petitioners were well within the knowledge that the said land was already sold to one Bherulal by registered sale deed dated 07.06.1999. It is also within the knowledge of the petitioners that the said Bherulal has also filed a Civil Suit against the petitioner Prateek only. In spite of the said knowledge, the power of attorney was executed in favour of co-accused Vardhman by Prateek Kuarm on 05.01.2012 and who further executed the sale deed in favour of respondent on 29.12.2021 with intention to cheat him and grab the amount of Rs.10/-lacs from him.

6. It is also alleged that in the year 2015 the suit title Bherulal v. Prateek Kumar and others was decreed by the Ld. Trial Court vide order dated 27/04/2015. That, it is only after the filing of Civil Appeal in the year 2016, Respondent no. 02 filed the instant Complaint on 03/07/2018 against present Applicant and other co-accused persons alleging that accused persons have forged the Power of Attorney and Cheated him by selling the said property. That, on 27.12.2021 Ld. Court of JMFC, Mahidpur, Dist. Ujjain, MP has ordered to register offences punishable under section 420 and 468 of the IPC in the instant matter. On 02.11.2022 Ld. II ADJ, Mahidpur, Ujjain, MP vide its order dated 02.11.2022 ordered to frame charges under section 420 and 468 of IPC against Applicant and other accused person. Hence, the present petition before this court.

7. During the course of arguments, it is submitted by counsel for the petitioner that respondent no. 02 has instituted the present complaint with ill-will,



feeling of revenge and also to pressurize the Applicant to return the money so transferred to him under the alleged Contract of Transfer of the said property. The factum that Applicant had intention to cheat at the very inception to the respondent no. 02 is to be discarded for the reason that everyone predecessor-in-title to Applicant became the title holder vide registered sale deeds and were always in possession of said property, therefore under the genuine belief and in good faith, applicant purchased the property and subsequently transferred it to Respondent no. 02. Thus, in the given facts and circumstances, the ingredients i.e., ‘deception’ and ‘dishonest intention’ at the very inception is missing in the instant case, therefore, applicant cannot be said to have committed the act of cheating punishable under section 420 of the IPC.

8. It is further submitted that as per settled position of law, it is clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463 of the IPC. Therefore, it can be safely deduced that Section 464 defines one of the ingredients of forgery i.e., making of a false document. Further, Section 465 of the IPC provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465 of the IPC, first it has to be proved that forgery was committed under Section 463 of the IPC, implying that ingredients under Section 464 of IPC should also be satisfied. Therefore, it is essential that ingredients of section 463 and 464 of the IPC are required to be satisfied for an act to be punishable under section 468 of the IPC. In the light of above-mentioned reasons, the impugned order dated 02.11.2022 passed by the Ld. If ADJ, Mahidpur, Ujjain, MP whereby the Ld. Court ordered to frame charges punishable



under section 420 and 468 of the IPC against the applicant is illegal, perverse and bad in law. Hence, prays for setting aside the impugned order.

9. In turn, learned Govt. Advocate submitted that there is sufficient material available against the accused with regard to offence under Sections 420 and 468 of IPC. The learned trial Court has rightly framed the charges against the petitioner and co-accused because they have sold the land in question to the complainant without there being any legal power of attorney. The offence under Section 468 of IPC is triable by Session Judge. Respondent no.02 filed the instant Complaint on 03/07/2018 against present Applicant and other co-accused persons alleging that accused persons have forged the Power of Attorney and Cheated him by selling the said property. However, learned Govt. Advocate fairly conceded that as per the case diary nothing can be adverted regarding forgery against the petitioners.

10. On the other hand, counsel for the respondent no.2 has vehemently opposed the prayer and submitted that The property was sold to respondent fraudulently and a civil suit was pending which was well known by the petitioners as he is also party in the said suit. The power of attorney has been prepared even after pendency of the civil suit between the parties. This is a dishonest concealment of the facts to get financial gains by way of cheating, because disclosure of the same shall affect the financial benefit of the petitioners. It is also alleged by counsel for the respondent that the petitioners were well aware about the fact that the said land was already sold by to one Bherulal vide the registered sale deed dated 07.06.1999 by predecessors of the land. In spite of that, they have executed the forged power of attorney as well as sold out the land to the respondent with intention to cheat him. It is also submitted that the factum on the basis of which the



charges has been framed, cannot be considered at this stage in the revisional power and the same is the matter of trial. Counsel for respondent no.2 has opposed the prayer of petitioner and born out the impugned order of framing of charges against the petitioners and prays for dismissal of the petitions.

11. On due consideration of the rival submissions and on the perusal of the record it is evident that there is nothing on record to prove the offence of forgery against the applicant. According to Section 228 of Cr.P.C Sessions Judge can frame charges only when if he, after considering and hearing on the charges, is of opinion that there is ground for presuming that the accused has committed an offence which is exclusively triable by the Court of Session. However, having gone through the record it is found that that no evidence is available against the applicant by which the Court can presume that the applicant has forged the documents for the purpose of cheating. The prosecution is unable to produce any evidence regarding any forged documents in the Court and nothing has been mentioned regarding that documents in the entire case of the prosecution. Even while framing of charges the trial Court has not adverted about any forged documents, however, in the order of framing of charge, it is certainly, mentioned that the accused has intentionally forged the documents for the purpose of cheating and dishonest use. Nevertheless, it is not mentioned as to which documents has been forged by the applicant. Hence this Court is of the considered opinion that the impugned order regarding framing of charges under Section 468 of IPC, 1860 is liable be set aside and petitioner is entitled to be discharged from same.



12. On this aspect, while considering the similar issue, the Hon'ble Apex Court in para no.17 in the case of **Mohd. Ibrahim vs. State of Bihar [(2009) 8 SCC 751]**, has observed as under:-

"17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under [section 464](#) of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither [section 467](#) nor [section 471](#) of the Code are attracted."

13. Further, the Hon'ble Apex Court, in the case of **Sheila Sebastian vs. R. Jawaharaj [(2018) 8 SCC 751]** has reiterated the judgement of Mohd. Ibrahim (supra) and considered as under:-

"22. In [Md. Ibrahim](#) (supra), this Court had the occasion to examine forgery of a document purporting to be a valuable security ([Section 467](#), IPC) and using of forged document as genuine ([Section 471](#), IPC). While considering the basic ingredients of both the offences, this Court observed that to attract the offence of forgery as defined under [Section 463](#), IPC depends upon creation of a document as defined under [Section 464](#), IPC. It is further observed that mere execution of a sale deed by claiming that property being sold was executant's property, did not amount to commission of offences punishable under [Sections 467](#) and [471](#), IPC even if title of property did not vest in the executant."





14. On this aspect, the findings of Hon'ble Apex Court in the case of **Bandekar Brothers (P) Ltd. And Another Vs. Prasad Vassudev Keni and Others [(2020) 20 SCC 1]**, while dealing on the point of forgery, the Hon'ble Apex Court has emphasized on the definition of Section 463 of IPC is ordained as under:-

"50. [Section 463](#) of the IPC speaks of “forgery” as being the making of a “false document” or “false electronic record”, or a part thereof, to do the various things that are stated in that section. Unless a person is said to make a false document or electronic record, Section 463 does not get attracted at all. The making of a “false document” is then dealt with in [Section 464](#) of the IPC. On the facts of the present case, we are not concerned with the categories of false documents identified under the heads “Secondly” and “Thirdly” of Section 464. Shri Mishra states that the making of the debit notes by the Respondents in order to falsely claim amounts owing to them would fall within the “First” category under Section 464."

15. Further, relying upon the another judgments, the Hon'ble Apex Court has viewed in para nos.55 and 56 as under:-

55. This Court, however, held that [Section 464](#) of the IPC was not attracted, as follows:

“164. A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or



under the authority of someone else. The second criterion of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criterion of the said section is also not applicable to the present case. The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document.

165. The learned Special Judge, therefore, in our opinion, erred in holding that the accused had prepared a false document, which clearly, having regard to the provisions of the law, could not have been done.

166. Further, the offence of forgery deals with making of a false document with the specific intentions enumerated therein. The said section has been reproduced below.

“463. Forgery.—Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.” However, since we have already held that the commission of the said offence has not been convincingly established, the accused could not have been convicted for the offence of forgery. The definition of “false document” is a part of the definition of “forgery”. Both must be read together. [Vimla (Dr.) v. Delhi Admn. [AIR 1963 SC 1572] Accordingly, the accused could not have been tried for offence under



Section 467 which deals with forgery of valuable securities, will, etc. or Section 471 i.e. using as genuine a forged document or Section 477-A i.e. falsification of accounts. The conviction of the accused for the said offences is accordingly set aside.”

56. "It is thus clear that even if we are to put aside all the averments made in the two complaints (which clearly attract the provisions of Sections 191 and 192 of the Penal Code), and were to concentrate only on the debit notes that are said to have been “created” by the Respondents, it is clear that the debit notes were not “false documents” under [Section 464](#) of the IPC, inasmuch they had not been made with the intention of causing it to be believed that they were made by or under the authority of some other person. **Since this basic ingredient of forgery itself is not made out, none of the sections that are sought to be relied upon in Chapter XVIII of the IPC can thus be said to be even prima facie attracted in the facts of this case.**"

16. In view of the aforesaid discussion in its entirety as well as the settled propositions of law, the impugned order regarding framing of charges under Section 468 of IPC, 1860 suffers from illegality and irregularity, therefore, the charges framed under Section 468 of IPC are not sustainable.

17. So far as the charges framed under section 420 of IPC are concerned, it is evident from the record that when the petitioner Prateek has executed a power of attorney and thereafter, executed the sale deed in favour of respondent no.2, he was well within the knowledge of the fact that the said land was already sold to one Bherulal, however, with intention to cheat, the petitioners have concealed this fact. Therefore, the offence of cheating is clearly made out *prima facie*. So far as the intention of cheating at inception is concerned, when the Civil Suit is already filed by one Bherulal and the same is pending in the Court, the petitioner Prateek



executed the power of attorney in favour of co-accused who further sold the land to respondent no.2, hence, it cannot be assumed that they have not intention to cheat the purchaser of the land i.e. respondent no.2. Therefore, prima facie, there are ingredients of Section 420 of IPC available against the petitioners.

18. In the case of **State of Maharashtra v. Priya Sharan Maharaj and others, AIR 1997 S.C.2041**, the Hon'ble Apex court mandated that High Court cannot seek independent corroboration at stage of framing of charge and quash charge and discharge accused. At the state of framing of the charges, the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

19. Again in **Arun Vyas and another v. Anita Vyas, AIR 1999 SC 2071**, the Hon'ble Apex court observed that Section 239 has to be read along with S. 240 Cr. P. C. If the Magistrate finds that there is prima facie evidence or the material against the accused in support of the charge (allegations) he may frame charge in accordance with S. 240 Cr. P. C. However, if he finds that the charge (the allegations or imputations) made against the accused do not make out a prima facie case and do not furnish basis for framing charge, it will be a case of charge being groundless, so he has no option but to discharge the accused. Where the Magistrate finds that taking cognizance of the offence itself was contrary to any provision of law, like Section 468 Cr. P. C., the complaint being barred by limitation, so he cannot frame the charge, he has to discharge the accused.

20. Further in the case of **State of M.P. Vs. S. B. Johari and others, AIR 2000 SC 665**, Hon'ble Supreme Court also said that quashment of charge by



appreciating materials produced by prosecution at the stage of framing of charge is not justified. At the stage of framing charge, the Court is not required to marshal materials on record but only has to *prima facie* consider as to whether there is sufficient materials against accused. Court observed :-

“It is settled law that at the stage of framing the charge, the Court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for conviction the accused. If the Court is satisfied that a *prima facie* case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence, which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence if any, cannot show that accused committed the particular offence. In such case there would be no sufficient ground for proceeding with the trial”.

21. In the case of **State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338** the Hon’ble Apex court further viewed that the crystallized judicial view is that at the stage of framing charge, the court has to *prima facie* ponder as to whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. In **Kanti Bhadra Shah v. State of West Bengal, 2000 (1) SCC 722** the Hon’ble Apex Court observed if the trial court decides to frame a charge, there is no legal requirement that he should pass an order specifying the reasons as to why he opts to do so. Framing of charge itself is *prima facie* order that the trial judge has formed the opinion, upon consideration of the



police report and other documents and after hearing both sides, that there is ground for presuming that the accused has committed the offence concerned.

22. In upshot of the aforesaid appreciation of law, it can be articulated that since the earlier sale deed dated 07.06.199 in favour of Bherulal was concealed and deliberately not disclosed by the petitioners while executing the sale deed dated 29.12.2012 in favour of respondent no.2, it will be treated as false statement and creating misconception for committing cheating. Accordingly, the offence under Section 420 of IPC is *prima facie* made out.

23. Therefore, in the wake of the aforesaid findings, the revision petition stands partly *allowed*. The petitioners are discharged from the charges framed under Section 468 of IPC against them. Charges framed under Section 420 of IPC against the petitioners are hereby affirmed and 2nd Additional Sessions Judge, Mahidpur, Ujjain is directed to proceed further in accordance with law.

24. It is made clear, this Court has not made any comment on the merits of offence under Section 420 of IPC, hence, the findings of this order shall not come in the way of trial court and the learned trial Court shall proceed in accordance with law without being influenced with the observations of this Court.

25. A copy of this order be sent to be Court below for necessary information and compliance.

26. A copy of this order be kept in the record of connected CRR No.810/2023.

Pending application, if any, stands closed.



Certified copy, as per Rules.

**(PREM NARAYAN SINGH)**  
**JUDGE**

Amit