

**(2018) 05 RAJ CK 0174**

**In the Rajasthan High Court**

**Case No :** Criminal Miscellaneous Petition No. 1783 of 2015

**Imi Lal @APPELLANT@Hash State of Rajasthan & Ors.**

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**Date of Decision :** 22-05-2018

**Acts Referred:**

Code of Criminal Procedure, 1973 — Section 156(3), 200, 202, 482  
Indian Penal Code, 1860 — Section 120B, 420, 467, 468, 471

**Citation :** (2018) 05 RAJ CK 0174

**Hon'ble Judges :** SANDEEP MEHTA, J

**Bench :** Single Bench

**Advocate :** R.S. Choudhary, M.S. Panwar, Vikram Singh Rajpurohit, Mukesh Rajpurohit

**Final Decision :** Allowed

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## **Judgement**

By way of this petition under Section 482 CrPC, the petitioners herein have approached this court for challenging the order dated 12.06.2015 passed

by learned Additional Session Judge No.2, Bikaner in revision affirming the order dated 27.09.2014 passed by learned Judicial Magistrate, First Class,

Khajuwala, District Bikaner in connection with FR Case No.107/2014 arising out of FIR No.114/2014 of the Police Station Khajuwala taking

cognizance against the petitioners for the offences under Sections 420, 467, 468, 471 and 120-B IPC.

Facts in brief are that the respondent No.2 complainant filed a complaint in the Court of Judicial Magistrate, Khajuwala alleging inter alia that she was

an illiterate rustic villager residing with her family in the village Chak 19 KJD. A total of 23.1 bighas command as well as uncommand agricultural

land was allotted to Aamad Khan, the complainant's late husband in Chak 3 SSM (B) of Murabba No.87/35, Tehsil Khajuwala. After the death

of Aamad Khan, the land was transferred to the complainant. The accused had

formed a cartel and were allegedly involved in sham land dealings.Â They were having an evil eye on the complainant's land and wanted to usurp the same.Â The accused No.1 Imilal was a Teacher in Government School.Â He approached the complainant respondent and allured her with an offer to get her pension papers prepared in the village camp.Â On 23.01.2014, the complainant had gone to her daughter's house.Â The petitioner No.1 came there and expressed that he was desirous of helping the complainant in getting her pension papers prepared and that she should accompany him.Â The complainant fell for the inducement given by the petitioner and she as well as her son-in-law Chhanku accompanied the accused in his car.Â They were taken to the Mangalam Photostat Shop, where the other accused petitioners were sitting in wait.Â The complainant and her son-in-law were made to put their thumb impressions on certain papers with an assurance that the same would be used for getting the pension papers prepared.Â Thereafter they were left back at Chak 19 KJD. On 19.03.2014, accused Sher Mohammed and Noor Mohammed approached the complainant and told her that they had got her land transferred in their names, upon which the complainant and her son-in-law contacted the petitioner No.1, who assured that he would get the documents cancelled.Â However, despite long passage of time, petitioner No. Imilal did not do anything, on which the complainant pressed him to get her land back, but the accused bluntly told her that they had cheated her and that she was free to do what she desired.Â The complainant was sent to the police station for investigation under Section 156 (3) CrPC, where FIR No.114/2014 was registered and investigation commenced.Â During the course of investigation, the Investigating Officer found that the complainant could not produce any independent witness to support her allegations.Â It was also found that immediately after the death of her husband, the complainant sold the land to Sher Mohammed for a consideration of Rs.2,33,000/-, which she received in cash and simultaneously she gave all rights of the land to Sher Mohammed by executing a power of attorney in his favour.Â At that time, no documentation was done.Â The complainant executed a power of attorney and Sher Mohammed already sold the land to Noor Mohammed on 08.01.2013 on the basis of the power of attorney executed by the complainant.Â The complainant got a total sum of

Rs.3,33,000/from Sher Mohammed in two parts, in the years 1992 and the remaining in the year 2014 respectively.Â She executed the power of attorney in favour of Sher Mohammed after getting the remaining consideration amount.Â However, despite executing the power of attorney voluntarily, the complainant continued to press the petitioner Noor Mohammed and demanded more money, who refused to accede to such demands, on which the complainant proceeded to file the complaint, which the Investigating Officer found to be false after investigation.Â A negative final report was submitted in the Court of Judicial Magistrate, Khajuwala, whereafter a notice was issued to the complainant, who appeared in the court and filed a protest petition and got her own and her witnessesâ?? statement recorded under Section 200 and 202 CrPC. The learned Magistrate, upon hearing the arguments advanced on behalf of the complainant proceeded to reject the negative final report and accepted the protest petition by the impugned order, whereby cognizance was taken against the petitioners in the above terms.Â The petitioners unsuccessfully challenged the order taking cognizance by filing a revision, which was rejected on 12.06.2015.Â Thereupon the instant miscellaneous petition has been preferred on behalf of the accused petitioners for challenging the orders passed by the courts below. Mr. R.S. Choudhary, learned counsel representing the petitioners, vehemently urged that the allegations levelled by the complaint against the petitioners in the highly belated complaint are false, fabricated and obliquely-motivated.Â He urged that the complainant executed a registered power of attorney for her land in favour of Sher Mohammed way back in the year 1997 after receiving complete consideration.Â Even thereafter Sher Mohammed acted fairly and before selling the land, he got executed a fresh power of attorney in January 2014 after paying an additional amount to the complainant.Â He could have sold the land unilaterally on the basis of the existing power of attorney, but the complainant was kept present before the Sub-Registrar when the sale-deed was executed.Â Her photograph was affixed on the sale deed.Â The complainant herself appeared before the SubRegistrar for executing the power of attorney on both the occasions and never made any protest before the officer that she was being made to sign the documents by fraud or misconception. He, thus, contends that there was no material available on record of the case so to justify the order

taking cognizance against the petitioners for the above offences and craved acceptance of the miscellaneous petition imploring the court to quash and set aside the impugned orders.

The learned Public Prosecutor supported the arguments advanced by Mr. Choudhary and agreed that the police did not find the complainant's allegations substantiated after investigation.

Mr. Mukesh Rajpurohit, learned counsel representing the respondent complainant, vehemently opposed the submissions advanced by Mr. Choudhary and urged that the complainant was lured and misled by the accused into believing that she had been brought to the tehsil office for signing the pension papers. Giving this fraudulent inducement to the illiterate widow lady, the accused managed to get a fraudulent power of attorney executed without passing on any consideration to the complainant and thereafter got her land transferred without her consent. He, thus, urged that this court should not interfere in the well-reasoned concurrent findings of facts recorded by the courts below in the impugned orders so as to interfere in prosecution case at this nascent stage.

I have given my thoughtful consideration to the arguments advanced by counsel for the parties and have gone through the material available on record and have perused the impugned orders. Ex facie, it is apparent that the complainant admittedly appended her thumb impression on the disputed documents. Thus, the only question which remains to be examined is as to whether the act of getting her thumb impressions on the property transfer documents was based on any fraudulent allurements or inducements. The documents in question are all registered documents. The Investigating Officer during investigation collected the registered power of attorneys executed by the complainant in favour of Sher Mohammed once in the year 1997 and the other in the year 2014. The complainant has not challenged these power of attorneys or the sale made in furtherance thereof in any court of law till date. Thus, the sale deed executed on basis of the power of attorney executed by the complainant in favour of Sher Mohammed has become final. Allowing a criminal prosecution to be continued for the very same transaction of sale performed in favour of the purchasers through registered documents would lead to an absolutely anomalous situation because on the one hand, the purchasers would continue to hold a valid title of

the land through registered documents, which have not been questioned by the complainant in any civil court and on the other hand, they would be made to face trial for alleged fraud in execution of the sale documents.

In this background, ex facie I am of the firm opinion that the order taking cognizance passed by the learned Magistrate is grossly illegal and amounts to an abuse of process of law because the cognizance was taken by the learned Magistrate in total ignorance of and without considering the relevant findings recorded by the Investigating Officer in the negative final report and the significant evidence collected in favour thereof.

In view of the discussion made hereinabove, this court is of the firm opinion that allowing the prosecution of the petitioners in this case is nothing short

of a gross abuse of process of law.Â Consequently, the instant miscellaneous petition deserves to be and is hereby allowed.Â The order dated

27.09.2014 passed by learned Judicial Magistrate, First Class, Khajuwala and the order dated 12.06.2015 passed by learned Additional Sessions Judge

No.2, Bikaner and all proceedings sought to be taken thereunder against the petitioners are hereby quashed.