

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 4<sup>TH</sup> DAY OF JULY, 2022

BEFORE

THE HON'BLE Mr. JUSTICE HEMANT CHANDANGOUDAR

**CRIMINAL PETITION No.2386/2019**

**BETWEEN:**

1. MRS.M.DHANALAKSHMI @ LAKSHMI RAJAN
  
2. MURALI RAJAN

...PETITIONERS

(BY SRI.DHANUSH.M., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
BY KOTHANUR POLICE

REPRESENTED BY:  
STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDINGS  
BENGALURU - 560 001

2. MRS.M.LAKSHMI PRIYA

.. RESPONDENTS

(BY SRI.S.VISHWAMURTHY, HCGP FOR R1;  
SRI.DHARMAPAL, ADVOCATE FOR R2)

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THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO SET ASIDE THE ORDER DATED 10.02.2017 PASSED BY THE XI ADDL. C.M.M., MAYOHALL, BENGALURU IN C.C.NO.57286/2016 (PCR NO.52548/2014 TAKING COGNIZANCE FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 420, 504, 506(B) R/W 34 OF IPC.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The charge sheet is filed for the offences punishable under Sections 420, 504, 506(B) read with Section 34 of IPC alleging that petitioner No.1/accused under the pretext of looking after the complainant got executed a power of attorney and affidavit in her favour. Subsequently without taking care of the complainant, the petitioner No.1 has entered into a sale agreement with one Mr.Ramachandraiah and received a sum of Rs.1,00,000/- and thereby has committed the aforesaid offence.

2. Learned Magistrate after accepting the charge took cognizance of the aforesaid offence and issued summons to the petitioners against which the present petition is filed.

3. Learned counsel for the petitioners submits that as on the date of filing of the complaint, the

complainant had divested herself of the subject property by executing a registered deed of cancellation in favour of the original owner. He further submits that the allegation made in the complaint even accepting on the face of it, does not constitute the commission of the offence alleged against the petitioners-accused. He further submits that the complaint is not maintainable for not having complied with Section 154 Cr.P.C.

4. Learned HCGP and learned counsel appearing for respondent No.2 submit that petitioner No.1 fraudulently got executed a power of attorney on the pretext of looking after her, but has not looked after her and has executed an agreement of sale in favour of Mr.Ramachandraiah by receiving a sum of Rs.1,00,000/- as advance sale consideration, thereby committed the offences as aforesaid. The Police after

investigation have rightly filed the charge sheet and the same does not warrant interference.

5. I have considered the submissions made by the parties.

6. The perusal of the complaint discloses that the allegation against petitioner/accused No.1 is that she fraudulently got executed a power of attorney in her favour on the pretext of looking after the complainant and by misusing the power of attorney has executed an agreement of sale in favour of Mr.Ramachandraiah and received a sum of Rs.1,00,000/- and thereby committed the aforesaid offences.

7. The perusal of the power of attorney indicates that the complainant had executed the power of attorney since she was not in a position to manage the property due to her old age. There is no

recital in the power of attorney that the power of attorney was executed in favour of accused No.1 only on the ground that accused No.1 was required to look after her during her old age. In order to constitute the offence punishable under Section 420 of IPC, there must be specific allegation that from inception, there must be a dishonest intention on the part of the accused to cheat the complainant.

8. In the present case, there is no specific allegation that from the date of execution of power of attorney in favour of accused No.1, there was dishonest intention on the part of petitioner No.1/accused. In the absence of essential ingredients so as to constitute the offence punishable under Section 420 of IPC, the charge sheet filed against the petitioner No.1/accused is without any substance.

9. The perusal of the Police complaint filed under Section 200 Cr.P.C indicates that there is no compliance under Section 154 of Cr.P.C. The complainant having not complied with Section 154(1) and 154(3) of Cr.P.C., the complaint filed by the second respondent is not maintainable.

10. The complainant has executed registered cancellation deed dated 27.07.2013 divesting herself of all the rights over the subject property in favour of the original owner as on the date of filing of the suit. The complainant had no subsisting right interest over the subject property. In the absence of any loss or injury caused to the complainant, the filing of the complaint for the offences punishable under Section 420 of IPC is impermissible.

10. Accordingly, I pass the following order:

**ORDER**

- i) The Criminal petition is allowed.
- ii) The impugned proceedings in C.C.No.57286/2016 pending on the file of XI Additional Chief Metropolitan Magistrate, Mayohall, Bengaluru is hereby quashed insofar as it relates to the petitioners.

**Sd/-  
JUDGE**

AKC