

**C482 No.1363 of 2013**  
**Hon'ble V.K.Bist, J.**

Mr. Neeraj Garg, Advocate for the appellants.

Mr. R.K. Sah, A.G.A. with Mr. K.S. Rangarh, Brief Holder for the State.

Mr. Gopal K. Verma, Advocate for the respondent no.2.

Heard learned counsel for the parties.

Preliminary objection has been raised by Mr. Gopal K. Verma, Advocate for the respondent no.2 regarding maintainability of this criminal misc. application and submitted that the appellants have alternative remedy of revision.

Mr. Neeraj Garg, Advocate for the appellants submitted that though there is alternative remedy available to the appellants, but this is a case where there is gross misuse of process of law and therefore, this criminal misc. application should be entertained. He submitted that some forged Will was prepared by the son of the appellant no.1 and on the basis of forged Will, he executed gift deed in favour of his wife (respondent no.2). Thereafter, the appellants instituted a suit for cancellation of gift deed as well as for cancellation of Will. The parties appeared before the Court and compromise was entered between the parties. Thereafter, compromise decree was drawn and gift deed was cancelled. Thereafter, some portion of land was sold by the appellants to the third party. In the meantime, the respondent no.3 also filed Suit No.186 of 2011 for cancellation of the compromise

decree. On 31.03.2011, an ex-parte temporary injunction was granted and the parties were directed not to create any third party interest. The said order was challenged before this Court and the proceedings of the Suit No.186 of 2011 were stayed. Thereafter, an application was moved by the respondent no.3 before the Court for extension of interim order, but since this Court stayed the proceedings, no order for extending interim order was passed. Thereafter, applicants further sold some portion of land to the third party. The respondent no.3 lodged F.I.R., in which after investigation, charge sheet was filed and cognizance was taken by the Magistrate. Learned Magistrate issued summoning order on 26.08.2013. Against the charge sheet dated 24.12.2012 and summoning order dated 26.08.2013, present criminal misc. application has been filed by the applicants.

Since the applicants have efficacious remedy of revision, the present criminal misc. application is dismissed on the ground of alternative remedy. In case, revision is filed, the learned Revisional Court shall consider the delay condonation of the applicants by considering the fact that this criminal misc. application was filed and remained pending for short period.

**(V.K. Bist, J.)**

31.12.2013

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