

Cr.R.No. 584/2017

Uttam Tolani Vs. State of M.P.

**High Court of Madhya Pradesh: Bench at Indore****Single Bench: Hon'ble Shri Justice S.K. Awasthi, J****Cr.R. No. 584/2017**

Uttam Tolani

vs.

State of M.P.

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Shri Prateek Maheshwari, learned counsel for the applicant.

Shri Vishal Sanothiya, learned counsel for the respondent/SPE.

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**ORDER**

(Passed on 31st May, 2018 )

The applicant has preferred this criminal revision under Section 397 read with Section 401 of Cr.P.C against the order dated 27/01/2017 passed by IInd A.S.J., Indore in Sessions Trial No.695/2016, whereby the charges under Sections 419, 420, 467, 468 and 471 read with Section 120-B of the IPC have been framed against the applicant.

02. The facts giving rise to this petition are that complainant Smt. Pushpa w/o Ramchandra Sharma, the alleged registered power of attorney holder of the land bearing survey No.259 admeasuring 1.436 hectares situated at village Mirjapur, district Dewas lodged a complaint against the applicant that the aforesaid land belongs to her mother since 1995 and she remains in the possession of the said land since then. It is further alleged that around 2 months back, two unknown persons went to meet her mother at Dewas and asked

about the said land upon which she informed the aforesaid persons to talk with her daughter Pushpa Sharma regarding this land. On 23/06/2016 when she read a public notice in newspaper Dainik Bhaskar regarding purchase of the said land, she asked her mother about it but she refused to have published any such notice, therefore, doubt raised in her mind that some syndicate persons are trying to sell the agricultural land by creating forged documents. In such circumstances, the complainant has made a complaint to the Police. On the basis of the said complaint an FIR bearing crime No.261/2016 under sections 419, 420, 467, 468 & 471 read with Section 120-B of IPC was registered and after completion of investigation charge sheet was filed before the competent Court. The trial Court after considering the charge sheet framed the charges against the applicant as is stated herein above, which is the subject matter of challenge before this Court.

03. Learned counsel for the applicant submitted that neither any role of the applicant in connection with the alleged offence has been made in the FIR nor there remains any specific role of the applicant regarding which the charges have been framed. The applicant neither has committed any cheating, forgery or fraud nor was identified by the complainant in any manner. Even in the statement of the complainant recorded under section 164 of the Cr.P.C only the name of the applicant has been mentioned without any specific allegation, therefore, it is clear that applicant has not played

any role in the present crime. He has been implicated in the present crime being a purchaser of the said land. Under these circumstances, learned counsel for the applicant submitted that applicant be discharged from the aforesaid charges.

4. Learned Public Prosecutor has opposed the prayer and prayed for dismissal of the petition.

5. I have considered the rival contention of the learned counsel for the parties and perused the record.

6. The contents of the FIR as well as the agreement dated 05/12/2006 do not indicate that the applicant involved in commission of offence charged against him. Investigation is silent about the manner in which such forgery has been done by the applicant. From the perusal of charge-sheet it reveals that the allegation against the applicant are solely based on the memorandum under Section 27 of the Evidence Act, given by the co-accused persons. The law in respect of Evidence Act is well settled that the evidence of the accused shall not be relied on or could not be made basis against the co-accused persons. In this respect reliance taken on the case of **Mohd. Tariq Vs. State of Maharashtra, AIR (2010) SC (884)** and in the case of **Mohd. Zalaluddin Vs. State of West Bengal, AIR 2014 SC 4727**, wherein the apex Court has held that confession of the co-accused cannot be treated as substantial evidence to other than the person, who made it.

7. Memorandum of the applicant was recorded under Section 27 of the Evidence Act, is also not admissible because

no recovery has been made on the basis of aforesaid memorandum. The provision of Section 27 of the Evidence Act is exception to the Section 25 of the Evidence Act. Hence, single line of this memorandum was admissible that the accused kept a particular article at particular place. Except that line remaining portion of the memorandum is not admissible and therefore, the memorandum of the applicant is accepted a confessional statement made to a police officer, which is not admissible in the provision of Section 25 of the Evidence Act. Apart from this, the prosecution has not produced any evidence to show that the applicant is prepare forged documents regarding for purchase of the property in question.

8. Apart from it, this Court finds merit in the contention that before entering into written agreement with the co-accused persons namely Vinay @ Varun Kasera, Babulal @ Bablu, Amardeep Borasi, Lalit Chourasiya, Abhishek Tiwari @ Sonu, Kanaklata Tiwari, Yogesh Agrawa, Nirdesh Tiwari and Sachin Patil, who impersonated themselves as the owner of the disputed property, the applicant published a public notice on 23/06/2016 in newspaper “Dainik Bhaskar” to invite objection regarding the alleged transaction, which also shows his innocense, therefore, I am unable to hold that the applicant-Uttam Tolani can be implicated as an accused in the entire transaction.

9. The powers available to this Court at the stage of

framing of charge as laid down by the Hon'ble apex Court in the case of **Dilabar Babu Kurane Vs. State of Maharashtra reported in (2002) 2 SCC 135** in para 12 has held as under:-

“12 Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad

probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

10. Applying the above principle, the case in hand, I find that except disclosure statement as alleged, there is no other evidence available on record to connect the applicant with the present crime. When there is no other evidence on record established his involvement, then he cannot be convicted on the basis of disclosure statement of other co-accused persons, which in my opinion has also not credible as no recovery is made on the basis of such disclosure statement. There is no credible evidence produce before this Court to upheld the charge framed against the applicant.

11. In view of the aforesaid, this petition filed under Section 482 of the Cr.P.C. is allowed and the charges framed against the applicant-Uttam Tolani for the offence punishable under Sections 419, 420, 467, 468, 471 read with Section 120(B) of the IPC is hereby quashed. Trial for remaining co-accused persons shall remain continue without being prejudiced by the observation made in the instant order.

Certified Copy as per rules.

**(S.K. Awasthi)**

**Judge**

skt

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