
(2007) 02 MP CK 0077
In the Madhya Pradesh High Court

Ajay Pandey

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 06-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 340, 482
Succession Act, 1925 — Section 276

Citation : (2007) 02 MP CK 0077

Hon'ble Judges : S.L. Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.L. Jain, J.—Invoking extraordinary jurisdiction of this Court u/s 482 of the Code of Criminal Procedure (hereinafter referred to as the "Code") petitioner Ajay Pandey has filed this petition for quashing the FIR dated 18-5-2006 lodged in Police Station, Habibganj, Bhopal and registered at Crime No. 466/2006.

2. The petitioner has stated that he and respondent Nos. 2 and 3 are son and daughters of late R.K. Pandey, retired Senior Member of Indian Administrative Service. R.K Pandey expired on 21-5-2005 at Bhopal. He, before his death executed a will on 17th April, 2005 in presence of Ravindra Tiwari, a family friend and Advocate of more than 20 years standing and Rakesh Tiwari, a Senior Officer with the Government of Madhya Pradesh. Late R.K. Pandey constructed a house situated at E-1/86, Arera Colony, Bhopal. He also left behind cash and other items of jewellery. By the aforesaid will the said house was bequeathed to the petitioner being the only son and for other deposits and investments amounting to Rs. 20 lacs nominated younger daughter, respondent No. 2. Before his death R.K. Pandey, handed over papers of immovable property to the petitioner and of deposits and other investments to respondent No. 2.

3. It was further alleged by the petitioner that after the death of the father, the respondent No. 2 acting as nominee had withdrawn the entire amount from the saving bank deposits and other investments amounting to Rs. 20 lacs. There was

no dispute between the petitioner and the respondents in regard to the distribution of the assets. After withdrawing Rs. 20 lacs the respondent No. 2 insisted that she be also given share in the immovable property. The petitioner tried to convince the respondent No. 2 that, pursuant to the will of late father she already has her share and it was for this reason that their late father had delivered the papers relating to the house to the petitioner and papers relating to other items to her, therefore the wishes of the father must be respected but the respondent No. 2, playing in the hands of some unscrupulous elements made an application in the office of the revenue authorities for incorporation of her name in the revenue papers. She also filed a civil suit for partition of the property, possession and injunction in the Court of Additional District Judge, Bhopal, which is registered as Civil Suit No. 146-A/2005, copy of which has been filed as Annexure P-2.

4. According to the petitioner, he was compelled to file an application u/s 276 of the Indian Succession Act for grant of probate in respect of immovable property, copy of which has been filed as Annexure P-3. The petitioner has averred that respondent Nos. 2 and 3, realizing that the proceedings in the civil suit may turn out to be a long drawn battle, decided to cut short and made a complaint to the police to get the FIR registered. Copy of the FIR has been filed as Annexure P-4. The police authorities made an application to the Court of IXth Additional District Judge for examination of the will. The Additional District Judge allowed the application and ordered examination of the will by a handwriting expert. Copy of this order has been filed as Annexure P-7.

5. Notice of the petition was served on the respondents.

6. I have heard Shri Sanjay Agrawal, Counsel for the petitioner, Shri Prakash Gupta, Panel Lawyer for respondent No. 1 and Shri Ajay Gupta, Counsel for respondent Nos. 2 and 3 and perused the documents annexed with the petition.

7. Counsel for petitioner submitted that the dispute between the parties is predominantly of civil nature. It was respondent Nos. 2 and 3 who first filed the civil suit for partition of property, possession and injunction. Petitioner also filed an application for grant of probate. In the civil suit, the respondent Nos. 2 and 3 have made the similar allegations regarding the alleged fictitious and forged nature of the will. If the investigation takes place on the FIR, it may greatly prejudice the petitioner in civil suit filed by respondent Nos. 2 and 3 and in the application for probate filed by him. The respondent Nos. 2 and 3 having filed the civil suit for partition, possession and injunction without waiting its logical conclusion immediately rushed with ulterior motive to convert the case of predominantly civil nature into a criminal prosecution to cow down the petitioner. Counsel also submitted that in case, the respondent No. 2 as alleged in the suit for partition, was aware of the forged nature of the will nothing prevented her from filing the FIR. After filing of the civil litigation and several rounds of negotiations, the FIR has been filed with ulterior motive. The respondent No. 2 had already withdrawn nearly about Rs. 20 lacs and wanted more which the

petitioner was not in a position to give, therefore, in order to humiliate the petitioner has lodged the FIR making a false allegation that the will executed long back on 17-4-2005 is forged. Respondent No. 2 was aware of the will as mentioned in her suit for partition. The object of the respondent Nos. 2 and 3 is to harass the petitioner so that he may give up his interest in the father's property and accept their arbitrary demand. The FIR has been made to arrive at a forced settlement by way of a short cut measure.

8. The Counsel for petitioner in support of his contention relied on *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others*, , *G. Sagar Suri and Anr. v. State of U.P. and Ors.* 2000 Cr.L.J. 824 and *Indian Oil Corporation v. NEPC India Ltd. and Ors.* 2006 AIR SCW 3830.

9. Per contra, learned Counsel for respondent Nos. 2 and 3, relying on *Shiva Nath Prasad Vs. State of West Bengal and Others*, , *Central Bureau of Investigation Vs. Shri Ravi Shankar Srivastava, IAS and Another*, , *State of Karnataka and Another Vs. Pastor P. Raju, and State of Punjab v. Kasturi Lal and Ors.* 2005 Cri.L.J. 3200 submitted that complaint cannot be dismissed at initial stage merely on the ground of alleged malafide of complainant. While exercising inherent powers this Court cannot enter into an inquiry whether the facts alleged in the FIR are reliable or not. The powers u/s 482 of the Code cannot be exercised to interfere with the statutory powers of police to conduct investigation in a cognizable case and that at this initial stage this Court cannot on an assumption of fact come to a finding of fact that the will is not forged.

10. It is true that while exercising jurisdiction u/s 482, Cr.P.C. this Court does not interfere with the power of investigation and the test is applied by the Court as to whether the uncontroverted allegations as made prima facie establish the offence, but as has been held in *Madhavrao Jiwajirao Scindia's case (supra)*, it is also for the Court to take into consideration special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the criminal law cannot be utilized for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of the case quash the proceeding even though it may be at a preliminary stage. Though a case of forgery may be both a civil wrong and a criminal offence, there would be certain situations where it would predominantly be a civil wrong and may or may not amount to criminal offence.

11. The present case is one of that type where the matter is predominantly a civil wrong. A civil suit is already pending between the parties. The issue as to whether the alleged will is forged or not is pending in the Civil Court. The respondent Nos. 2 and 3 cannot be allowed to give the civil dispute of property a cloak of criminal offence. Criminal procedures are not short cut of other remedies available in law. Jurisdiction u/s 482 of the Code can be exercised to prevent abuse of the process of the Court or otherwise to procure ends of justice.

12. As has been held in G. Sagar Suri's case (supra), criminal proceedings are not short cut of other remedies available in law. In the case of State of Karnataka Vs. L. Muniswamy and Others, , the Apex Court has held that the High Court is entitled to quash the proceedings if it comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings are to be quashed. In Chandrapal Singh and Others Vs. Maharaj Singh and Another, , it has been held that a frustrated litigant should not be permitted to give vent to his frustration cheaply by agitating invoking jurisdiction of the Criminal Court.

13. In the present case, when civil proceedings with regard to the legality of the will are already pending in Civil Court, the question as to whether the will is forged or not can be determined by Civil Court, therefore, the respondent Nos. 2 and 3 cannot be permitted to misuse the criminal law to entangle the petitioner into a criminal prosecution to cow him down. In the sequence of facts as stated in the petition, permitting the respondent Nos. 2 and 3 to misuse the criminal law by filing FIR, where the matter is predominantly a civil dispute, would be the abuse of the process of law and the interest of justice requires that the FIR which has been lodged to cow down the petitioner should be quashed. The Counsel for the petitioner vehemently submitted that FIR cannot be quashed on the ground of malafides.

14. The contention cannot be accepted. In often cited judgment of State of Haryana and others Vs. Ch. Bhajan Lal and others, , it has been held that a criminal proceeding can be quashed if it is malafidely instituted.

15. The offence of forgery is alleged to have been committed in respect of a document produced in a proceedings in a Court, therefore, the cognizance cannot be taken except on the complaint in writing of that Court. If the Civil Court before which the matter is pending, comes to such conclusion it shall be at liberty to make a complaint. The respondent Nos. 2 and 3 also can make an application in this behalf. Initiation of criminal case on the basis of the FIR may certainly prejudice the petitioner in proceeding with the civil case. Section 340 of the Code provides an efficacious redress for the grievances of the respondent Nos. 2 and 3.

16. In the peculiar circumstances of the case lodging of the FIR is clearly an abuse of the process of law. Therefore, the petition stands allowed. The FIR dated 18-5-2006 lodged by respondent Nos. 2 and 3 against the petitioner at Police Station, Habibganj, Bhopal, which has been registered at Crime No. 466/2006 is liable to be quashed and is quashed.