

(2023) 08 RAJ CK 0061

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Petition) No. 5914, 6497 Of 2021, 2268, 3108 Of 2022

Amar Lal And Others

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 19-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 482

Citation : (2023) 08 RAJ CK 0061

Hon'ble Judges : Kuldeep Mathur, J

Bench : Single Bench

Advocate : Vikas Bijarnia, Laxman Solanki, Surya Prakash Sharma

Final Decision : Dismissed

Judgement

Kuldeep Mathur, J

The instant criminal miscellaneous petitions have been preferred by the petitioners praying for quashing entire proceeding arising out of FIR No.92/2021 registered at Police Station Sadar Pali, District Pali for offences under 420, 467, 468, 471 and 120B IPC.

As per prosecution story, Shri Thana Ram Bhaat who had khatedari rights over Khasra No.520/10, admeasuring 70 bighas and 14 biswas, situated in Gram Bhangesar, passed away in the year 2001. On 04.10.2001, Government of Rajasthan launched campaign named 'Prashashan Gaon ke Sang', in which the names of heirs of Shri Thana Ram Bhaat i.e. five sons namely, Panchhi Ram, Bhanwar Lal, Vena Ram, Joga Ram, Oma Ram and wife of Shri Thana Ram Bhat, Smt. Raji Devi, were to be entered in the mutation but instead family members of Shri Thana Ram Bhaat, Ranka Ram @ Ranjit son of Rana Ram, Darbara Ram son of Jetha Ram (petitioner Nos.3 and 2 respectively in CRLMP No.6497/2021), allegedly claimed to be fake heirs of Shri Thana Ram Bhaat, through Babu Lal (petitioner in CRLMP No.5914/2021) told Halka Patwari - Amar Lal (petitioner in

CRLMP No.3108/2022) about the same and got their names identified and registered as heirs of Shri Thana Ram Bhaat in the mutation and thereby reaped the benefits of disputed land.

Petitioners - Ranka Ram and Darbara Ram (in CRLMP No.6497/2021) thereafter, on 05.03.2021, created power of attorney in relation to their share (two-eight) of the disputed land, admeasuring 17 bighas and 13 biswas, in favour of their cousin-petitioner - Chunni Lal son of Babu Lal (petitioner No.1 in CRLMP No.6497/2021). Petitioner - Chunni Lal, on the basis of above mentioned power of attorney, got sale agreement created in favour of his brother Govind son of Babu Lal (petitioner in CRLMP No.2268/2022). All the accused-petitioner belonging to the same family being well aware about the forged documents (forged mutation, power of attorney and sale agreement) intentionally created and used them, in order to cheat and deprive the complainant of his right to the disputed land.

Learned counsel for the petitioners submitted that FIR has been lodged against present petitioner with an oblique motive by Bhanwar Lal - respondent No.2 in all these Misc. Petitions. Learned counsel submitted that mutation entries were made in the year 2001, in the names of petitioners except Amar Lal who was Halka Patwari at that time. It was submitted that the names were allegedly entered on the basis of a will executed by deceased - Thana Ram Bhaat on 12.06.1995. Learned counsel submitted that admittedly, the petitioners except Amar Lal and complainant are relatives of the deceased and the complainants were well aware of the fact that mutation entries have been made in favour of petitioners in the year 2001 itself. Learned counsel submitted that in view of this factual scenario, the power of attorney executed by petitioner - Darbara Ram in favour of petitioner - Chunni Lal is genuine one. It was further argued that on the very same day, complainant also executed his share of the disputed land in favour of Kheta Ram and both the power of attorneys had been notarised by one Mangi Lal. It was thus urged that the complainant cannot be allowed to blow hot and cold in the same breath.

It was vehemently submitted that admittedly, the mutation entries in favour of petitioners- Ranka Ram and Darbara Ram were made in the year 2001 and the same remained unchallenged for years but when ill will developed in the mind of the complainant and only with a view to put undue pressure upon petitioners, an FIR in the year 2021 on the basis of false story and concocted facts has been filed against them. Learned counsel submitted that entire criminal proceeding initiated against the petitioner is nothing but abuse of process of law and therefore, FIR No.92/2021 registered at Police Station Sadar Pali, District Pali, may be quashed and set aside.

Per contra, learned Public Prosecutor opposed the submissions advanced by learned counsel for the petitioners and submitted that thorough investigation has been conducted by the investigating agency and it has been found that the petitioners - Ranka Ram and Darbara Ram are not heirs of late Thana Ram. It

was also urged that the petitioners' electoral roll were taken from Vidhan Sabha area, Sumerpur which revealed that petitioner-Ranka Ram is son of Rana Ram while petitioner - Darbara Ram is son of Jetha Ram. It was further urged that ration card of petitioner - Darbara Ram was also taken during investigation which fortified the information gathered from electoral roll. It was submitted that the investigating agency had also procured the ancestry report of above mentioned petitioners from Halka Patwari which also revealed that the petitioners are sons of Rana Ram and Jetha Ram and not of Thana Ram. Learned Public Prosecutor submitted that will allegedly executed by late Thana Ram in favour of petitioners - Ranka Ram and Darbara Ram has neither been produced on the record of the present criminal miscellaneous petitions nor the same has been discovered by the investigating agency during investigation. Alternatively, it was submitted that even otherwise, genuineness of the will, if any, has to be examined by the investigating agency only, after making due inquiries and conducting investigation into the matter.

Learned Public Prosecutor submitted that the allegations made in the FIR clearly disclose commission of cognizable offence and therefore, the police has to register the FIR which cannot be termed as an abuse of the process of law. Learned Public Prosecutor and learned counsel for the complainant urged that when the FIR discloses a cognizable offence, it would not be proper for the Court to interfere with the investigation, particularly when investigating agency, on the basis of material collected during investigation has found the charges to be proved against the petitioners.

Reliance was placed on the judgment of Hon'ble Supreme Court in the case of State of Haryana vs. Bhajan Lal & Ors. reported in 1992 Supp. (1) SCC 335, wherein Hon'ble Apex Court has illustrated the situations wherein, the extraordinary powers under Article 226 of the Constitution of India or the inherent powers under Section 482 Cr.P.C. can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The Hon'ble Court illustrated as under:-

"(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police

officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Learned Public Prosecutor and learned counsel for the complainant thus, prayed that the criminal miscellaneous petitions deserve to be rejected by this Court.

Heard learned counsel for the petitioners, learned Public Prosecutor and learned counsel for the complainant. Perused the material available on record.

Having gone through the contents of FIR and considered the facts and circumstances of the case, this court finds that the case of the petitioners hinges around certain revenue/mutation entries made in favour of petitioners and power of attorney and sale agreement based on will allegedly executed by late Thana Ram in favour of present petitioners. It is apposite to note that the alleged will has not been produced before this Court, even otherwise, the validity and genuineness of the same cannot be gone into by this court at this stage. This court also finds that investigating agency has found the offences alleged against the petitioners to be proved.

In the opinion of this Court, various disputed questions of facts are involved in the present case, therefore, it would not be proper for this Court, at this stage to scan the entire material produced before it by the contesting parties and record its definite findings, after examining the disputed documents, by recording conclusions based thereupon, for quashing the impugned FIR. From the perusal of the FIR, this Court finds that a cognizable offence is made out against the petitioners. It is a well settled law that the Court while exercising its powers under Section 482 CrPC cannot decide the correctness of the allegations levelled against accused persons.

In the result, petitioners have failed to make out a prima facie case warranting exercised of powers under Section 482 CrPC for quashment of the FIR in question.

Accordingly, the present criminal miscellaneous petitions fail and are hereby

dismissed.