
(2017) 04 MP CK 0030
In the Madhya Pradesh High Court
Case No : 8714 of 2012

Bhagwan Singh (Dead) & Others

APPELLANT

Vs

State of MP & Others

RESPONDENT

Date of Decision : 26-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 156\(3\)](#) - Police officers power to Investigate cognizable case
[Indian Penal Code, 1860](#), [Section 120B](#), [Section 1767-420](#)

Citation : (2017) 04 MP CK 0030

Hon'ble Judges : N. K. Gupta

Bench : Single Bench

Advocate : SC Jain, Jagdish Singh, JM Sahni, RK Sharma

Final Decision : Dismissed

Judgement

(1) Since both the petitions are connected with the same Crime No.47/2012 registered at Police Station Inderganj, Gwalior, they are decided by the present common order.

(2) The applicants have preferred the present petitions to quash the registration of Crime No.47/2012, registered at Police Station Indarganj, District Gwalior for offences under Sections 403, 418, 420, 467, 468, 471, 477 and 120-B of IPC.

(3) Prosecution's case, in short, is that a document dated 25/01/2008 was found executed in favour of applicant Boswel Francis (the applicant in MCRC 8233/2012) by A.B. Joseph appointing him his attorney in general for one year. A document dated 13/02/2008 was found executed which was a sale deed executed by the applicant Boswel Francis, being attorney of the complainant AB Joseph Francis. Similarly, a Will was also found executed in favour of the applicant Boswel Francis and it was executed by the complainant A.B. Joseph Francis. The complainant A.B. Joseph Francis thereafter filed an application under Section 156(3) of the CrPC before the Magisterial Court and vide order dated

20/01/2012, the JMFC Gwalior (Shivani Dhatara) passed an order under Section 156(3) of the CrPC and thereafter a crime was registered at Police Station Indarganj, District Gwalior against as many as ten persons including the applicants of both the cases. However, one of the applicants in MCRC 8714/2012, namely, Bhagwan Singh Rathore expired during pendency of the petition.

(4) Since various respondents have received the notices of the petitions and pleadings were complete, I have heard the learned counsel for the parties at length.

(5) The learned counsel for the applicants submits that the document which was a power of attorney, was registered at the Office of Sub-Registrar of Deeds and Documents and, therefore, it cannot be said that it was a forged document. Similarly, the Will executed by the complainant AB Joseph Francis was a registered document and, therefore, this cannot be challenged. In this connection, the learned counsel for the applicant- Boswel Francis has relied upon the judgment passed by the Privy Council in the case of ""Sennimalai Goundan and Another vs. Sellappa Goundan and Others"" [AIR 1929 Privy Council 81]. Reliance has been placed on the various judgments and orders passed by various High Courts in the cases of " Kanwarani Madna Vati and Another vs. Raghunath Singh and Others "" [AIR 1977 Himachal Pradesh 41], "" Bahadur Ram vs. Smt. Mangla Devi "" [2009 (2) ARC 817(Uttarakhand High Court)],

""Ram Dhani and Others vs. State of UP "" [1997 All.L.J. 795], ""Mahesh Chand (Deceased) and Others vs. BOH. Ram Murti Sharma and Others"" [1995 All.L.J 343] and ""Bala Prasad and etc. vs. Bhola Nath and Others"" [AIR 1981 NOC 29 (All.)] to show that the registered sale deed and document have presumptive value that those were executed by the concerned executant. If a person holding a registered power of attorney from the owner where the owner has made the acknowledgment before the Sub-Registrar, the endorsement of the Sub-Registrar about it, shall be presumed to be correct. It is true that all the registered documents have their presumptive value but when executant of the documents challenges that such documents were executed due to misrepresentation and since the applicant Boswel Francis was nephew of the complainant A.B. Joseph Francis and it is claimed by the complainant A.B. Joseph Francis that the applicant Boswel Francis misused his confidence and got the documents executed without informing the contents of the documents. Hence, it can be a subject-matter of cheating though the documents have their presumptive value.

(6) In this connection, the notice dated 06/06/2008 as given by Shri Moti Lal Gupta, Advocate to the applicant Boswel Francis and Smt. Tarawati, it would be clear that House No.14/74, Mandi Sayeed Khan, Hari Parwat Ward, Agra (UP) was the property of Refiel Francis and thereafter, his sons Leo Francis, Petric Francis and Joseph Francis became the owner of the property. Hence, the complainant A.B. Joseph Francis had a share on the property and, therefore, by Will he could not devolve the entire property to the applicant Boswel Francis. Therefore, prima facie, the claim of the complainant Joseph Francis appears to be

correct that contents of the documents were not informed to him and the documents were executed by misrepresentation. It is also alleged by the learned counsel for complainant AB Joseph Francis that in document of sale

deed it was mentioned that Leo Francis, father of the applicant Boswel Francis was not alive. However, the learned counsel for the applicants have invited the attention of this Court to a correction deed in which it was mentioned that the father of the applicant Boswel Francis was alive.

(7) If Leo Francis was alive along-with AB Joseph Francis and legal representatives of their third brother Petric Francis were alive, then the complainant AB Joseph Francis did not have the sole ownership of that property and he could not permit his nephew Boswel Francis to dispose off the property by executing a power of attorney and, therefore, a possibility cannot be ruled out that the documents of power of attorney and Will were executed by the complainant AB Joseph Francis due to misrepresentation of the applicant Boswel Francis and hence, prima facie it can be said that the applicant Boswel Francis has committed an offence of Section 420 of IPC because soon after getting the power of attorney executed he sold the entire property to Smt. Tarawati and others and obtained the sale amount. The matter was registered in the year 2012 and the applicant Boswel Francis did not cooperate in the investigation pending before the SHO, Police Station Indarganj, District Gwalior. It was for him to show that he transferred the entire sale amount of the property to the complainant AB Joseph Francis but there is no document on record to show that he gave the entire consideration of sale deed to the complainant AB Joseph Francis and, therefore, by such transaction he obtained the sale amount of the property i.e. unlawful gain obtained by the applicant Boswel Francis.

(8) When prima facie it is proved that the complainant AB Joseph Francis was misrepresented and it was not possible for him to execute a Will in the name of the applicant Boswel Francis leaving his sons where the complainant AB Joseph Francis did not have the complete ownership of the property, it was not possible for him to execute such a Will

and, therefore, possibility of forgery of the documents cannot be ruled out that the actual complainant AB Joseph was not produced before the Office of Registrar when the Will was executed. Hence, it is the matter of investigation as to whether the Will and other documents were actually executed by the complainant AB Joseph Francis or not and as to whether he knew the entire text of such documents?

(9) It is surprising that a power of attorney as well as a Will was simultaneously executed. When the complainant AB Joseph Francis has given a power of attorney to Boswel Francis to dispose of the property then there was no reason to execute a Will and if the Will was executed then after death of the complainant AB Joseph Francis the applicant Boswel Francis would have received the share of the complainant AB Joseph Francis in the suit property and, therefore, it was not

possible for the complainant AB Joseph to execute a Will as well as a power of attorney simultaneously.

(10) Similarly, though it is apparent that Smt. Tarawati and others could be bona fide purchasers of the property but it is made clear that Smt. Tarawati and her husband including other family members were the tenants in the suit property and being tenants they would have knowledge about the owner of the property and, therefore, they would have the knowledge that it was the property of not only the complainant AB Joseph Francis but his brothers were also the owners of the property but having such a knowledge she purchased the property on the basis of power of attorney given by a co-sharer. The complainant AB Joseph Francis and applicant Smt. Tarawati and others had the knowledge that by such sale deed they can not get the complete ownership of the property. It is yet to be examined that what was the actual price of the property at the time of sale and whether it is sold in a meager amount. Under these circumstances, it cannot be said that the purchasers of the

property were bona fide purchasers and they are clean and they did not involve in the same crime along-with the applicant Boswel Francis.

(11) The learned counsel for the applicants have also challenged the order dated 20/01/2012, passed by the concerned JMFC, Gwalior under Section 156(3) of CrPC that without the sufficient evidence such order has been passed. However, the Magistrate has mentioned the judgment of the Apex Court in the case of " D.K. Pattnaik vs. Station House Officer ""[2008 CrIj 2287 (SC)], in which it is held that if prima facie Magistrate finds that the various ingredients are present that the crime was committed but for taking cognizance, investigation is necessary then an order under Section 156(3) of CrPC shall be passed. In the present case, various documents were filed by the complainant AB Joseph Francis and it is apparent from the pedigree of the family that the complainant AB Joseph Francis could not execute such power of attorney or Will in favour of the applicant Boswel Francis whereas he did not have complete ownership of the property and he was mere a shareholder. Under these circumstances, sufficient evidence was available before the Magisterial Court so that the order under Section 156(3) of CrPC could be passed.

(12) On the basis of aforesaid discussion, where the order under Section 156(3) of CrPC is not invalid, it does not suffer from any illegality or perversity, that order cannot be quashed. Also, the order under Section 156(3) of CrPC passed by the Magistrate is of final nature and for challenging of that order a revision was to be filed. It appears that since order was passed on 20/01/2012 and limitation of revision was already seized then instead of filing a revision, a petition under Section 482 of CrPC was filed which was not maintainable against that order. However, the matter is considered by this Court on merits. On the basis of aforesaid discussion, there is no reason to

quash the FIR registered against the applicants of the aforesaid Crime. There is

no reason to invoke the inherent powers of this Court in favour of the applicants. Consequently, both the petitions filed under Section 482 of CrPC by various applicants including the applicant Boswel Francis are hereby dismissed.