(2009) 11 PAT CK 0002

In the Patna High Court

Case No : Criminal Miscellanious No. 20412 of 2008

D. Pradeep Kishan @ D. Pradeep, Swati Pradeep, Smt. Medha Shekhar and Vasant D. Manjrekar APPELLANT

Vs

The State of Bihar and Ravi Kishan Dongargaonkar RESPONDENT

Date of Decision : 04-11-2009

Acts Referred:

Citation : (2009) 11 PAT CK 0002

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—This application has been filed for quashing the order dated 23.04.2008 by which the Sub Divisional Judicial Magistrate, Danapur has taken cognizance of the offences committed under Sections 420 and 120B of the Indian Penal Code in Complaint Case No. 951C of 2007.

2. Ravi Kishan Dongargaonkar (the complainant) has filed a complaint petition challenging the Will executed by his father Late Kishan Gopal Dongargaonkar by alleging that it was obtained by fraud. It would be relevant to quote the genealogical table from the complaint petition.

Kishan Gopal Dongargaonkar (died on 23.03.2006) Nalini (wife)-died on 29.03.1989 | -- | | | | | | Daughter - 2 Son - 3 | | -- | | | | | | Nandini Ramesh (59 yrs) Jyoti Anant (56 yrs) | | | | | --- | | | | | | Ravi Kishan Chandu Kishan Pradeep Kishan (54 years) (43 years) (43 years) Partner in RA- (Died on 10.9.04 Partner in RA- 34 years in accident) 13 years (complainant) | (petitioner No. 1) | | | Anjali Ravi | Swati Pradeep (wife) | (wife) | (petitioner No. 3) Medha Shekhar (wife) Partner in RA-2 yrs. (petitioner No. 2)

3. The case of the complainant is that his father Late Kishan Gopal Dongargaonkar shifted to Bihar in the year 1972 and he along with his son established a business in the name and style of M/s Ravi Associates.

4. The other two brothers of the complainant were young and did not immediately join the business. In 1978, the father of the complainant purchased a piece of land bearing plot No. 148, 149 & 150 under Khata No. 44, 46 & 40 at Patna and built a house over the said lands known as NALINI. In 1983, Late Kishan Gopal Dongargaonkar shifted to Katmandu (Nepal). In 1985, Chandra Shekhar, one of the brothers of the complainant joined the business. It is said that there were four partners in the business, namely, Late Kishan Gopal Dongargaonkar, the complainant himself, D. Pradeep Kishan and D. Chandra Shekhar Kishan. The case of the complainant is that he took upon the responsibility of the business and it was because of him that the business grew and flourished. Pradeep Kishan, the youngest brother of the complainant joined the business on 01.01.1993. After the sudden death of Chandra Shekhar Kishan, his wife Smt. Medha Shekhar also joined the business of M/s Ravi Associates and began to work as a full time working partner. It is alleged that the father of the complainant lost interest in the affairs of the business since January, 1995 and finally died on 23.03.2006 at Patna at the age of 82 years. The specific allegations in the complaint petition are mentioned at paragraphs 8 and 9 of the petition wherein it is stated as follows:

8. That the complainant states that during the illness of Late Kishan, V.D. Manjrekar (Accused No. 3) who is father-in-law of D. Pradeep Kishan and father of Smt. Swati Pradeep Kishan (Accused No. 4) hatched a conspiracy to forge a "Will" of Late Kishan. In this conspiracy Smt. Medha Shekhar and one Mr. R.K. Verma, a Law Graduate and sometime practicing Lawyer in Jharkhand High Court at Ranchi, actively participated and abated the plan/conspiracy of V.D. Manjrekar, his daughter and his son-in-law. The conspiracy was given effect to after the death of late Kishan.

9. That the complainant states that the father of the complainant never disclosed execution of a Will and there was no reason for the father of the complainant to execute a Will written by Mr. V.D. Manjrekar and witnesses by Mr. R.K. Verma, who were/are residents of Ranchi in the State of Jharkhand. In fact, Mr. R.K. Verma (Accused No. 5) is a total alien to the family of the complainant as he had never visited the house of the complainant at Patna. The Complainant or his father had never taken any legal advice or work in connection with their business. However, Mr. R.K. Verma was not known to the family. He, however, was well known to Mr. V.D. Manjrekar as Mr. V.D. Manjrekar was a Consultant to M/s Usha Martin Industries, Ranchi, in the State of Jharkhand at Ranchi and in his official capacity he had been seeking advice from Mr. R.K. Verma. Thus, apparently Mr. R.K. Verma connived and conspired with Mr. V.D. Manjrekar and abated commission of an offence like forgery of Will of Late Kishan.

5. It is further stated that Late Kishan Gopal Dongargaonkar infact did not execute any Will and the Will, which was produced for the first time on 18th May, 2006, i.e. two months after the death of Late Kishan Gopal Dongargaonkar by Mr. V.D. Manjrekar who read out a Xerox copy of the Will in front of the

complainant, his wife and other persons present on behalf of D. Pradeep Kishan and Smt. Medha Shekhar was not the correct Will. More over, it is alleged that the original Will was not produced for perusal by the complainant. It is specifically stated that a probate case has been filed on 5.09.2006 being Probate Case No. 121 of 2006 before the District Judge, Patna which is now pending before the Additional District Judge, Fast Track Court No. II, Patna. After receiving notice, the complainant sought permission of the Court below to inspect the original Will before filing of the objection and after inspecting the Will he has filed the present complaint case in which he has pointed out the infirmities in the Will which are described at paragraph 13 and is quoted herein below:

13. That the complainant states that from perusal of the Will, it became clear to the complainant that it has been prepared cautiously on legal advice as a normal person cannot use the language of the Will. The Will contains a number of glaring infirmities which may be listed hereunder for purpose of this case:

(i) The alleged Will has been prepared in three pages which are computer printed but from perusal of the Will, it would appear that the Testator Late Kishan has not declared the name of the attesting witnesses in whose presence the Will has been executed.

(ii) Late Kishan (the testator) has not put any date on his own hand on the alleged Will.

(iii) The name and description of the property under Schedule "A" and Schedule "B" at third page of the alleged Will has not been signed by late Kishan.

(iv) That there is no signature of attesting witnesses on the first and second page of the alleged Will.

(v) That there is no declaration in the Will as to whom the signed copy of the Will is being handed over for the purpose of presentation. Possession of Will with Mr. V.D. Manjrekar does not inspire confidence as he is the person who appears to have prepared the Will for the benefit of his own daughter and son-in-law; got signature of his close associate and friend, Mr. R.K. Verma, Advocate as witness; after the death of late Kishan, he did not inform about the existence of the Will to the family on the fourteenth day.

(vi) That Mr. R.K. Verma, Advocate was neither known to late Kishan (the testator), nor he had ever visited the house of late Kishan. Mr. R.K. Verma had not visited the house of late Kishan on 09.10.2005, as his visit would have definitely drawn attention of the family members. This signature of Sri R.K. Verma as a witness has been managed by Mr. V.D. Manjrekar only to complete the formalities.

(vii) That the signature of late Kishan on page 1, 2 and 3 substantially and materially differs from each other. It may be tested with the naked eyes that the signatures do not tally with each other which clearly suggests that the signatures have been forged and fabricated after the death of late Kishan.

(viii) That the bequeathing of the Firm''s property, such as Asian Paints (Nepal) Pvt. Ltd., shares of 9% held by the firm under the alleged Will is wholly illegal and late Kishan was well aware that Firm''s property cannot be bequeathed. There is also a mismatch between the figures in the Will content and the figures in Schedule "A", The actual number of shares held by the firm as on 1st April, 2005 is 1,91,430 shares out of which 25% will come to 47,857.5 shares. If the contents of the alleged Will are taken into consideration, half of 47,857.5 should have gone to Pradeep and Medha. The half of 47,857.5 is 23,928.75 shares which should have gone to each of them, but in the alleged Will, 14,940 Nepal shares have been bequeathed in equal proportion, i.e. 7,470 Nepal shares each to Pradeep and Medha. In Schedule "A", the number of Nepal shares figure is 44,940. It is quite obvious that the Will has not been prepared at one instance of late Kishan otherwise he could have gathered the details of the shares held in Asian Paints (Nepal) Pvt. Ltd. The Schedule "A" is typed on the last page of the alleged Will and there is no signature of the Testator below the said Schedule "A".

(ix) In page 2, Clause (v) of the alleged Will, the fixed deposit of the firm has been disclosed as Rs. 76 lacs, but actually the fixed deposit as on 31.3.2005 as per the audited balance sheet comes to Rs. 72.5 lacs only. The variance of Rs. 3.5 lacs has been intentionally created to hide the source of document from which it has been taken moreover, it is an asset of the firm to take care of the liabilities of the firm namely Capital A/c Payments, employees'' compensation for retrenchment, gratuity and other sundry expenses payable. The assets of the firm may be distributed among the partners only upon the dissolution of the firm and after making good the liabilities of the firm. Thus, late Kishan could not have done this illegal bequeathment of the assets of the firm. The audited Petitioner & L A/c and Balance Sheet for the FY 2004-05 is dated 15.10.2005 and the information on deposit amount has been culled from this document and appears in the alleged Will dated 9.10.2005 and the information on deposit amount has been culled from this document and appears in the alleged Will dated 9.10.2005. This mismatch of dates is inexplicable.

(x) It is stated in page ''2'' of the alleged Will that "In case I die leaving debts, then such debts shall be payable by the Company/Companies and all expenses of administration, death duties and deathbed charges shall be borne from the Company/Companies A/c where I am a partner. These expenses will all be on Company/Companies A/c." This term of the alleged Will itself shows that Mr. V.D. Manjrekar has got prepared the alleged Will with an oblique motive and malafide intention to benefit his own daughter and son-in-law. Otherwise, no reasonable person can say that his debts will be payable by the Company and all expenses on account of his death bed charges will be borne from the Company''s A/c. This clearly indicates the guilty mind working behind the Will. Moreover, in accordance with the I.T. Law, the family is fully liable for these expenses.

6. It has also been stated that the Will was examined by a private handwriting

expert who gave his opinion in which he has stated that the signature on the Will does not match the signature of Late Kishan Gopal Dongargaonkar. Lastly, in the complaint petition itself, it is stated that this case is based on the judgment delivered in the case of Rajendra Prasad Pansari v. R.S. Lodha and Ors. popularly known as Birla v. Lodha case.

7. The question before this Court is whether the facts of this case constitute an offence under Sections 420 and 120B of the Indian Penal Code, and whether the judgment delivered in the Birla''s case referred to in the complaint petition would apply to the facts of this case.

8. This Court will first examine the contents and allegations made in the complaint petition to see whether a criminal offence is made out against the petitioners vis-?-vis the fact that a Probate case has been filed before the District Judge, Patna.

9. In a probate case, the main questions that have to be decided are as follows:

(a) whether the Will has been properly executed which would include issues such as whether there are any suspicious circumstances surrounding the execution of the Will; or Whether the attesting witnesses have signed on the Will;

(b) whether the signature of the testator is genuine;

(c) whether the testator was in a proper state of health at the time of execution of the Will; and

(d) Whether the application is barred by limitation.

10. Turning to the allegations made out in the complaint petition, it is alleged that the Will was prepared by taking legal advice of the Counsel Mr. R.K. Verma who is stranger to the family but well known to Mr. V.D. Manjrekar (father of Swati Pradeep), a conspiracy was hatched to prepare a Will. This allegation in fact does not constitute any offence at all. A legal practitioner consulted for any purpose or for the purpose of preparing a Will need not bear the qualification of being a personal friend of the family and the allegation that Mr. V.D. Manjrekar was consulted for the purpose does not in itself show any suspicious circumstances. It is natural that a person should want to make provisions for a widowed daughter-in-law, who also happens to be partner in the Company. This act in itself does not constitute any offence under the Code of Criminal Procedure.

11. The next objection of the Opposite Party in the complaint petition is that "Late Kishan'' has not declared the name of the attesting witness in whose presence the Will has been executed. This aspect of the matter is again a fact which has to be decided by the Probate Court, and the criminal courts cannot come to any finding regarding whether the Will has been executed in accordance with law.

12. The allegation is that "Late Kishan'' has not put the date in his own hand writing, and the signature of the testator is missing on the pages where the

schedule of properties has been mentioned is a question which has to be determined by the Probate Court. Again, this in itself cannot constitute an offence of cheating or lead to a Court to hold that the Will is forged. The allegation contained in Clause (v) wherein it has not been stated that it is not stated to whom the Will has been handed over for presentation, is not a circumstance which can be examined by the criminal courts. This aspect, if at all, will be looked into by the Court examining the Will for the purpose of issuing the Letters of Administration. The allegation is that the signatures on page 1, 2 and 3 substantially differ from each other. This is the personal opinion of the complainant and this point, if raised by the complainant in his objection petition would be examined by handwriting experts, appointed by the Court in seisin of the matter. Besides which cognizance has not been taken u/s 468 of the Indian Penal Code. In any event, unless a signature is proved to be forged, the allegation that the signature is forged, which is already a subjudice before a competent Civil Court cannot come within the purview of the criminal courts and it perhaps precisely for this reason that the Court below has not taken cognizance for the offence u/s 468 of the Indian Penal Code.

13. The allegations contained in sub paragraphs (viii) to (x) of paragraph 13 of the complaint petition relate to the properties, shares and bank accounts of Late Kishan. It is alleged that figures do not tally with the bank account and the quantum of share of the Company which indicates the oblique motive and malafide intention of the petitioner Mr. V.D. Manjrekar. The allegation mentioned aforesaid do not constitute any offence under the Indian Penal Code.

14. Cognizance in this case has been taken u/s 420 and 120B of the Indian Penal Code. Section 415 of the Indian Penal Code defines the term "cheating". It would be necessary to show that the Will was fraudulently or dishonestly prepared with the intention to retain the property to cause damage or harm to a person. The facts in the First Information Report do not make out a case of cheating or of criminal conspiracy which has basically been alleged against the petitioner No. 4, Vasant D. Manjrekar, who is the father of Swati Pradeep, petitioner No. 2.

15. It is admitted fact that the persons in whose favour the Will has been made out are son and daughter-in-law and the complainant, who has been bequeathed a part of the property of "Late Kishan'' merely because there is mismatch of figures, it cannot be presumed that the element of cheating was present while making out a Will. To give an illustration from the complaint petition itself, it has been asserted that the shares held by the firm on 1st April, 2005 were 1,91,430 shares, out of which 25% would come to 47,857.5 shares. It is stated that if the contents of the alleged Will if taken into consideration then Medha Shekhar and D. Pradeep Kishan would get 23,928.75 shares each, but in the alleged Will they have been bequeathed 7.470 Nepal shares each and as such it has been alleged that this shows that the Will is not a genuine document. The Court below has not come to a conclusion on the basis of the complaint petition that the document itself was forged and, therefore, it would be difficult for this Court to conclude

that there was a forgery or dishonest intention and the Will was prepared by deceiving the testator.

16. Thus, this Court finds that the issues raised in the complaint petition are such which can only be decided by the Probate Court, which is competent Court to decide whether the Will has been duly executed and signed by the testator and whether the testator was sound mind while executing the Will. This case is of civil nature and the dispute/objection raised to the execution of the Will, by the complainant regarding the shares allocated to the family members, who also happen to be the partners in the business, cannot be adjudicated in a criminal proceeding and is in fact beyond the scope of a criminal Court.

17. Reference may be made to the decision of the Supreme Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, wherein the Supreme Court after discussing the principles in details including the earlier decisions formulated seven grounds in which the High Court can exercise its inherent power of quashing a criminal proceeding u/s 482 of the Code of Criminal Procedure. The present case would come under the first exception "where the allegations made out in the First Information Report or the complaint, even if they are taken from the face value and accepted in their entirety, do not prima facie constitute any offence or malice out a case against the accused". The reasons for coming to this conclusion have been discussed above.

18. After discussing the allegations in some details, this Court will now turn to the judgment mentioned in the complaint petition which is the basis on which the complainant has filed the present complaint petition i.e. the case of Rajendra Prasad Pansari v. R.S. Lodha and Ors. popularly known as Birla v. Lodha''s case. (a copy of the judgment of the Birla v. Lodha''s case has been handed over to this Court while the argument was advanced.)

19. The facts are that the complainant and the de facto complainant Rajendra Prasad Pansari (Opposite Party No. 2 before the Kolkata High Court) have stated that the complainant was very close to Madhab Prasad Birla and his wife Priyamvada Debi Birla and was looking after their taxation matters since 1977. The complainant was also asked to look after the five trusts formed in the year 1988. The said trusts are subject matter of the complaint petition. In 1988, both Madhab Prasad Birla and Priyamvada Debi Birla had created five mutual and reciprocal trusts, to leave the estate covered by the five trusts to charity, out of which three are named as public charitable institutions. After the death of Priyamvada Devi Birla in July, 2004, the complainant learnt that Rajendra Singh Lodha had claimed the estate of Priyamvada Debi Birla and Madhab Prasad Birla on the basis of the will made by Priyamvada Debi Birla, which surprised him as he was aware that of the creation of five trusts, three were public charitable trusts as such it is alleged that the accused persons had criminally conspired to misappropriate properties worth Rs. 2400 crores vested by the five trusts.

20. The aforesaid misappropriation took place without revocation of the will by

practicing fraud and misrepresentation by Rajinder Singh Lodha who persuaded Priyamvada Debi Birla to attest a document which actually created a Will by which the five trusts were diverted from charity and became the personal wealth of Rajinder Singh Lodha, the first accused in the complaint petition. The details and the manner in which the trusts were created and subsequently diverted have been discussed in the judgment of Kolkata High Court.

21. One of the issues raised on behalf of the accused persons before the Kolkata High Court was that the Will by which the property was the subject matter of the probate case filed by the first accused and the validity of the Will cannot be tested by the criminal courts.

22. The facts in the Birla''s case are quite different to the facts of the present case. The facts and circumstances of the case revealed that it is alleged that Rajendra Singh Lodha had fiduciary capacity to control Priyamvada Debi Birla. Priyamvada Debi Birla was very ill and has no mental capacity to go through the papers and documents or to read the contents of documents. Taking advantage of her state of mind and by exercising this fiduciary capacity, Rajendra Singh Lodha himself by false representation to Priyamvada Debi Birla obtained her signature over the alleged Will.

23. In the present case, the facts do not disclose the elements of offences under Sections 406, 409, 467, 468 and 120B of the Indian Penal Code.

24. The High Court of Kolkata came to a finding after considering the complaint as a whole and after considering the documents and statement in the complaint, and the statement of witnesses u/s 202 of the Code of Criminal Procedure, an offence under Sections 406, 467 and 420 of the Indian Penal Code were made out against the accused and the issues mentioned below cannot be decided in a probate proceeding and as such refused to exercise its inherent power. The relevant portion of the allegations has been summarized as follows.:

(1) Whether late MPB and late PDB had any intention or wish to make endowment of their properties for charitable and religious purpose ?

(2) Whether the trust created by late MPB could be revoked by late PDB and, whether on the strength of direction and nomination of beneficiaries made by late PDB on the trust of late MPB making Hindustan Medical Institution beneficiary and giving certain properties to Mr. Lodha through the will ?

(3) Whether giving properties to other charitable institutions as made by late PDB herself through nominations in the trust deeds created by her making the said institutions beneficiaries can she thereafter, take away those properties from the said institutions and give it to Mr. Lodha through the will ?

(4) When Mr. Lodha himself was a trustee whether he could have allowed or consented to transfer properties vested to charity in his favour through the will and, if so, whether he exerted influence on late PDB by fiduciary relation on her ?

(5) Whether Mr. Lodha himself being the beneficiary of the impugned will, can take all steps in the preparation of the will and also calling the witnesses for execution and attestation as alleged and whether his action constitutes offence or offences as alleged ?

(6) Whether averments of complaint and statement of complainant and PW 2 M.P. Sharma makes out a case of fraudulent misrepresentation by Mr. Lodha and other accused persons on PDB behind execution of the impugned will ?

(7) Whether the action of the petitioner and other accused persons as depicted in the complaint and statement of witnesses recorded u/s 200 of the Code amounted to attract elements of abetment and conspiracy to transfer properties vested to charity in favour of late PDB and thereafter to Mr. Lodha through the impugned will constituting offence of abetment and conspiracy and breach of trust ?

25. The questions and allegations in Birla''s case as summarized above are very different to the facts of the present case and as such this Court finds that the decision in the Birla''s case would not be applicable to the facts of this particular case.

26. This Court therefore, quash the order dated 23.04.2008 by which the Sub Divisional Judicial Magistrate, Danapur has taken cognizance of the offences punishable under Sections 420 and 120B of the Indian Penal Code in Complaint Case No. 951C of 2007 for the reasons (a) that no offence is made out on the plain reading of the complaint and (b) the issues which are to be decided in the complaint case are the same which have to be decided in the probate case.

27. In the result, this application is allowed.

