
(2012) 09 AHC CK 0107

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 5883 of 2005

Mangla Prasad Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 203, 482
Penal Code, 1860 (IPC) — Section 120B, 419, 420, 423, 465

Citation : (2012) 3 ACR 3487 : (2012) 9 ADJ 614 : (2013) 1 ALJ 644

Hon'ble Judges : Vijay Prakash Pathak, J

Bench : Single Bench

Advocate : Ajeet Kumar Singh, R.N. Yadav, R.P. Mishra, Rajendra Kumar Pandey, Shamimul Hasnain and Patanjali Mishra, for the Appellant; G.K. Singh, G.K. Srivastava, Kamlesh Kumar, Ramanuj Tiwari, Ramanuj Tripathi and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Hon''ble Vijay Prakash Pathak, J.—The present petition u/s 482 Cr. P.C. has been filed by the applicants Mangla Prasad and three others with the prayer to set aside the order dated 15.7.2004 passed by A.C.J.M.-V, Court No. 16, Jaunpur in complaint Case No. 423 of 2003, Shiv Prasad Singh v. Mangla Prasad Singh and Others and the further proceedings arising out of said case. The facts of the case are that opposite party No. 2, Shiv Prasad Singh @ Ram Palat filed a complaint case No. 423 of 2003 in the Court of Additional Chief Judicial Magistrate- V, Court No. 16, Jaunpur on 5.3.2003 against the applicants and another, under Sections 419, 420, 423, 465, 467, 471 and 472 read with Section 120B IPC with the allegations that Smt. Manraji Devi was his real Bua (father's sister) and was married with Musai Singh, resident of Bhikhnapur, Police Station- Sarpatha, District Jaunpur but unfortunately Musai Singh died at a young age, so the said Bua started to live with Chauthi Singh, father of the complainant, in village Jagdishpur. The complainant's father Chauthi Singh also died when the complainant was only four years of age and as the complainant's mother was

pregnant with his younger brother (Dukhran Singh) at that time, so the complainant's Bua remained back at the his house in village Jagdishpur and looked after the house responsibilities. She had love and affection for the complainant and due to his services, she executed a power of attorney on 22.7.1991 in his favour and got it registered. As she had become very old and in order to avoid any dispute in future regarding the property, she also executed a registered will-deed in favour of the complainant and his brother Dukhran Singh. The complainant's Bua Smt. Manraji Devi had also opened a saving bank account No. 1036 in her name in District Cooperative Bank Ltd. on 6.8.1991 and had deposited some money but due to her illness she could not deposit any more money and ultimately on 20.3.1992 she died at the age of 90 years at the residence of the complainant. It is further alleged that the applicants 1 to 3 are the Pattidar of Smt. Manraji Devi and had an eye on her property and they entered into a criminal conspiracy with applicant No. 4 and another and got executed a forged gift-deed by some impostor on 19.9.1991 in favour of applicant Nos. 2 and 3 which was got registered at Kolkata, The thumb impression of Manraji Devi was fraudulently made by some unknown lady. It is also alleged that it is note-worthy that Manraji Devi, due to her old age, was not in a position to go to Kolkata and had not gone anywhere outside the village. The applicant Nos. 2 and 3 in collusion with other accused got their names recorded in the revenue records in Tehsil- Shahganj on 23.8.1992, on the basis of the said forged deed. The complainant, on coming to know about the said facts, moved a restoration application in Tehsil Shahganj, District- Jaunpur and ultimately filed a Civil Suit No. 1145 of 1995, Shiv Prasad v. Santosh Kumar Singh for cancellation of the said deed. Inspite of this, the applicants did not file their reply nor produced the said gift-deed in the said suit till the year 2000, rather the applicant Nos. 2 and 3 filed another Civil Suit No. 802 of 2000 against the complainant and his brother for cancellation of the will-deed executed in their favour and for grant of injunction. In the said suit they produced the said forged gift-deed and it is only then that the complainant came to know about the said gift-deed. The accused persons, under a criminal conspiracy and with the motive of grabbing the property of the complainant, had got prepared the forged deed in their favour and it was prayed that they may be summoned under the aforesaid Sections.

2. After receiving the said complaint, the learned Magistrate recorded the statement of the complainant and his witnesses under Sections 200 and 202 Cr. P.C. and after perusing the entire materials available on record, came to the conclusion that the alleged forged deed has not been canceled by a competent Court and unless there is declaration by a competent Court that the said deed is forged, no legal presumption can be drawn regarding the said deed to be forged and hence prima facie case does not appear to be made out against the accused persons and accordingly the complaint was dismissed u/s 203 Cr. P.C., vide order dated 18.9.2003.

3. Aggrieved by the said order passed by the learned Magistrate dismissing the

complaint, the complainant preferred a criminal revision No. 537 of 2003 before the Revisional Court and after considering the materials available on record, the learned Additional Sessions Judge came to the conclusion that the non-declaration of the said document to be forged by the competent Court does not create any hindrance in proceeding with the criminal case and hence, vide order dated 24.4.2004, the order of the Court below was set aside and the matter was remanded back.

On receiving the said order dated 24.4.2004 passed by the learned lower Revisional Court remanding the matter, the learned Magistrate, after considering the same, vide order dated 15.7.2004, summoned the applicants to face trial under Sections 419, 420, 467, 468 and 471 of IPC, finding prima facie case against them.

Hence, the present petition has been filed to set-aside the said order dated 15.7.2004 and the entire criminal proceedings in pursuance thereof.

4. Heard Sri Patanjali Mishra, learned counsel for the applicants, Sri G.K. Srivastava, learned counsel for the opposite party No. 2 as well as learned AGA for the State and perused the record.

Learned counsel for the applicants has contended that the matter pertains to purely civil nature and civil suits have been filed by both the parties for cancellation of the deeds and the said suits are still pending before the Civil Court, where validity and genuineness of the alleged will-deed in favour of the complainant and gift-deed in favour of the applicant Nos. 2 and 3 are under challenge and consideration, hence unless the said suits are decided, the criminal proceedings cannot go on. It is also submitted that the learned Magistrate has passed the impugned summoning order only on the basis of the Revisional Court's order without applying his mind and considering the entire materials on record.

5. On the other hand, learned counsel for the opposite party No. 2 has submitted that Smt. Manraji Devi was residing with the Opposite Party No. 2 and had executed a power of attorney and also a will-deed in his and his brother's favour, which was got registered but subsequently, the applicants got executed a gift-deed by some lady who impersonated Manraji Devi and got it registered at Kolkata, which was not possible as the said Manraji Devi was very old and was not in a position to go to Kolkata. It is also submitted that Manraji Devi died at the residence of the complainant and the entire last ceremony, including funeral etc., was conducted by the complainant and his brother. It is also submitted that mere pendency of the civil suits does not debar the criminal Courts to proceed against the criminal acts done by the applicants.

6. I have considered the arguments advanced on behalf of the rival parties and perused the record and several decisions of the Hon'ble Apex Court and our own High Court cited in the matter.

7. The Hon''ble Apex Court in its verdict in V.Y. Jose and Another Vs. State of Gujarat and Another, , has held that where the case essentially involving a Civil dispute, Section 482 Cr. P.C. serves a salutary purpose that a person should not undergo harassment of litigation even though no case has been made out against him.

8. In Parash Nath v. Judicial Magistrate, 2009 (64) ACC 782, our own High Court has observed that the dispute is purely civil in nature. The main allegation against the accused was that they by committing forgery got the names entered in revenue records and thereafter got the sale-deed executed in their favour. Under some what similar circumstance Supreme Court in Inder Mohan Goswami and another v. State of Uttranchal and others, 2008 (60) ACC 1 (SC), has held that such type of dispute can better be resolved in Civil proceedings and Criminal proceedings should be quashed u/s 482 Cr. P.C. by the High Court.

9. In another verdict in Md. Ibrahim and others v. State of Bihar and another, 2009 (67) ACC 679, the Hon''ble Apex Court has been pleased to observe that there is a growing tendency of complainants to give the cloak of a criminal offence which are purely civil in nature with the motive of either applying pressure on the accused or out of enmity towards the accused just to subject the accused to harassment. The criminal Courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes.

10. The Hon''ble Apex Court in a verdict in Sardool Singh v. Nasib Kaur , has held that when the question regarding validity of Will is sub-judice, criminal prosecution on the allegation of the Will being a forged one cannot be instituted. It is held that the matter is sub-judice in the aforesaid two cases in Civil Courts. At this juncture the respondent cannot therefore be permitted to institute a criminal prosecution on the allegation that the Will is a forged one. That question will have to be decided by the Civil Court after recording the evidence and hearing the parties in accordance with law. It would not be proper to permit the respondent to prosecute the appellants on this allegation when the validity of the Will is being tested before a Civil Court.

11. Now coming to the facts of the present case, admittedly a Civil Suit No. 1145 of 1995, Shiv Prasad and another v. Santosh Kumar Singh and others, was filed in the Civil Court by the opposite party No. 2 (the complaint) and his brother for cancellation of the alleged forged gift-deed executed in favour of the applicant Nos. 2 and 3. Another Civil Suit No. 802 of 2000 was filed by the applicant Nos. 2 and 3 against the opposite party No. 2 and his brother for cancellation of the alleged will-deed executed in their favour by the said Smt. Manraji Devi. During the pendency of said two suits, the complaint case No. 423 of 2003 has been filed by opposite party No. 2 The said two civil suits are still pending before the Civil Court and in both the matters, the validity and genuineness of the alleged forged gift-deed in favour of the applicant Nos. 2 and 3 and alleged will-deed in favour of the complainant- (opposite party No. 2) and his brother are still

subjudice. Admittedly Smt. Manraji Devi was the real Bua of the complainant, whereas Musai the brother of great grand father of the applicants No. 2 and 3 was her husband. As rival parties have filed the civil suits for cancellation of the deeds executed in the other party's favour and both civil suits are still pending and sub-judice before the Civil Court, where validity and genuineness of the deeds have to be decided after recording the evidence and hearing the parties in accordance with law, so in case, the said suits are decided in favour of the applicants and the alleged gift-deed is found to be genuine and its validity is upheld, then the present criminal proceedings would be nothing but an abuse of process of Court.

12. Learned Magistrate vide his earlier order dated 18.9.2003 had rejected the complaint u/s 203 of Cr. P.C. with the observation that unless the alleged deed is declared to be forged by a competent Court, no legal presumption can be drawn about the said deed to be forged. But subsequently when the matter was taken up in revision, the Magistrate Court's order was set-aside and the matter was remanded back. Thereafter, the learned Magistrate vide order dated 15.7.2004 summoned the applicants to face trial for the offenses punishable under the aforesaid sections, without considering the materials on record and only after perusing the observations of the learned lower Revisional Court.

13. There is no dispute regarding the legal position that mere pendency of Civil Suit does not debar the criminal Courts to proceed against the criminal acts done by accused persons but there should be a prima facie case of committing crime. In the present matter, the criminal proceedings are initiated for preparing forged gift deed by the applicants but the validity and genuineness of the same is under challenge and consideration before the Civil Court and even the validity and genuineness of the will in favour of the complainant is also under challenge before the Civil Court and suits by both the parties are still pending there. Hence, in these circumstances, the learned Magistrate must have considered about prima facie offence to be made out against the accused-applicants while passing the summoning order. Considering the entire facts and circumstances of the case as discussed above, in my opinion, as the validity and genuineness of the alleged gift-deed is sub-judice before the Civil Court and the validity of will-deed in favour of the complainant is also sub-judice before the Civil Court, hence, unless the finding of the Civil Court comes in, the present criminal proceedings is nothing but an abuse of the process of the Court and in order to promote justice and prevent injustice, the criminal proceeding in the aforesaid complaint case are liable to be quashed.

Accordingly, this application is allowed and the order dated 15.7.2004 passed by Additional Chief Judicial Magistrate-V, Court No. 16, Jaunpur in complaint case No. 423 of 2003, Shiv Prasad Singh and Others v. Mangla Prasad Singh and Others, summoning the applicants to face trial under Sections 419, 420, 423, 465, 467, 471 and 472 read with Section 120B IPC and the further proceedings in pursuance thereof are hereby quashed.