
(2018) 08 MP CK 0171

In the Madhya Pradesh High Court

Case No : Misc. Criminal Case No.11751 Of 2013

Maulana Imtiyaz

APPELLANT

Vs

State Of Madhya Pradesh & Anr

RESPONDENT

Date of Decision : 21-08-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 200, 482

Indian Penal Code, 1860 — Section 120B, 420, 467, 468, 471

Citation : (2018) 08 MP CK 0171

Hon'ble Judges : Rajeev Kumar Dubey, J

Bench : Single Bench

Advocate : Vipin Yadav, V. S. Mishra

Final Decision : Dismissed

Judgement

This petition has been filed under Section 482 of Cr.P.C. against the order dated 26/04/2013 passed by Judicial Magistrate First Class, Jabalpur in

criminal case No.6132/2013 whereby he took cognizance against applicant Maulana Imtiyaz Kadri and other co-accused Israr Hussain Gilani for the

offences punishable under Sections 420, 467, 468, 471 read with Section 120/B of IPC on the complaint of respondent No. 2 Smt. Girija Bai and

respondent No.3 Budhiya Bai.

Brief facts relevant for the disposal of this petition are that respondent No. 2 Smt. Girija Bai and respondent No.3 Budhiya Bai filed a private

complaint before JMFC, Jabalpur averring that the land survey No.664 measuring 1.13 Hectares situated at village Maharajpur, Block-Panagar,

Tehsil-Jabalpur was earlier owned by Barelal father of the complainant who died on 28/07/2001 and complainants/respondent Nos. 2 and 3 were only

heirs of deceased Barelal. Co-accused Israr Hussain Gilani in connivance with the applicant made Barelal's fake power of attorney on 21/11/2001

i.e., four months after his death and on that basis co-accused Israr Hussain Gilani executed registered sale deed of said land in favour of

applicant/accused Maulana Imtiyaz Kadri, while Barelal did not execute any Power of Attorney in favour of Israr Hussain Gilani. Applicant in

connivance with other co-accused Israr Hussain Gilani prepared false power of attorney of their father deceased Barelal after his death and on the

basis of that forged power of attorney to grab the land of complainants. Co-accused Israr Hussain Gilani executed sale deed of said land in favour of

applicant/accused and applicant/accused also sold some part of that property to Smt. Sikandra Bano by registered sale deed. So cognizance be taken

against applicant and co-accused Israr Hussain Gilani and Smt. Sikander Bano for the offences punishable under Section 420, 467, 468, 471, 120B of

IPC. On that learned JMFC recorded statements of complainants Smt. Budhiya Bai, Smt Girija Bai and Mannu Kewat under Section 200 and after

hearing arguments, by order dated 26/04/2013 took cognizance against the applicant and co-accused Israr Hussain Gilani for the offences punishable

under Sections 420, 467, 468, 471 read with 120-B of IPC. Being aggrieved from that order applicant filed this petition.

Learned counsel for the applicant submitted that Barelal executed Power of Attorney on 18/12/1996 in favour of co-accused Israr Hussain Gilani and

on the basis of that power of attorney Israr Hussain Gilani sold that land to applicant and executed the registered sale deed in favour of the applicant

on 20/11/2001. After purchasing the said land applicant applied for getting his name recorded in the revenue record of said property. In that mutation

proceeding, Sakun Bai, daughter-in-law of the deceased also appeared before the Revenue Court and her statement had been recorded by the Court.

At that time Barelal was residing with Munna Lal Kewat as Barelal's daughters were already married and had been residing in their maternal

houses. On the basis of registered sale deed, in the year 2003 name of the applicant was recorded in the revenue record, on the said land. Thereafter

applicant also sold some part of that land to Smt. Sikandar Bano on 17/09/2004 by the registered sale deed. On 15/03/2012 respondent No.2 and 3

filed civil suit no.____against the applicant in the Court of 13th Civil Judge Class-II Jabalpur. When learned civil judge did not grant stay in

complainantsâ?? favour they filed this complaint after lapse of about 11 years. It is clear from the death certificate of the deceased Barelal filed by

the respondents No.2 and 3 in support of their complaint before JMFC that the said certificate was issued on 19/12/11 i.e. after lapse of about more

than 10 years of death of Barelal which shows that complainants got this certificate on the basis of wrong information.

Applicant is a bonafide purchaser of said land so no offence is made out against the applicant. Learned Trial Court committed mistake in taking

cognizance against the applicant for the offences punishable under sections 420, 467, 468, 471 read with 120-B of IPC. In this regard, he also placed

reliance on Apex Court judgement passed in Parbatbhai Aahir v. State of Gujarat, (2017) 9 SCC 641, Rajib Ranjan v. R. Vijaykumar (2015) 1 SCC

513, Binod Kumar v. State of Bihar (2014) 10 SCC 663.

This Court has gone through the record and arguments put forth by the learned counsel for the applicant. It is admitted that the land survey No.664

measuring 1.13 Hectares situated at village Maharajpur, Block-Panagar, Tehsil-Jabalpur was earlier owned by Barelal. Co-accused Israr Hussain

Gilani executed sale deed of said land in favour of applicant on 20/11/2001 on the basis of the allegedly fake power of attorney executed by Barelal in

his favour. In the death certificate of deceased Barelal produced by the complainants in support of his complaint it is clearly mentioned that Barelal

died on 28/07/2001 well before the execution of said sale deed. Although this certificate has its date of registration mentioned as 19/02/11 while it is

alleged that Barelal had died on 28/7/2001. But only on that basis at this stage it can not be said that said complainants obtained the said documents by

giving wrong information regarding Barelalâ??s dob. From this certificate it prima facie appears that applicant got sale deed of said land executed in

his favour from co-accused Israr Hussain Gilani after the death of Barelal on the basis of power of attorney allegedly given by Barelal. But even if it

is assumed that said power of attorney is genuine it has no value after Barelalâ??s death .

From the documents of mutation proceedings of the said land produced by the applicant in support of his petition it also appears that applicant filed

application of mutation of said land in his favour in the year 2003 stating that he had purchased said land on 24/10/02 . Further the documents show

that the notice of this proceeding sent to Barelal was received back on 29/05/03 with the note that he had died two years before which prima facie

shows that Barelal had already died before execution of said sale deed.

In the complaint, it is clearly mentioned that Respondent/complainant Nos. 2 and 3 were only heirs of deceased Barelal. Co-accused Israr Hussain

Gilani in connivance with the applicant made fake power of attorney of Barelal on 21/11/2001 i.e., four months after the death of deceased Barelal

and on the basis of that co-accused Israr Hussain Gilani executed registered sale deed of said land in favour of applicant/accused Maulana Imtiyaz

Kadri, while Barelal did not execute any Power of Attorney on 28/12/1996 in favour of Israr Hussain Gilani. Applicant and other co-accused have

grabbed Barelal's land on the basis of a fake documents. So offences under section 467, 468, 471 read with 120B are prima facie made out against

present applicant. Merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases

of forgery and fraud there is always some element of civil nature. So such civil dispute or commercial disputes which may also contain ingredients of

criminal offence have to be entertained notwithstanding they are also civil dispute. As held by the apex court in the case of Arun Bhandari Vs. State

of U.P.& Others, 2013 (2) SCC 801.

The fact of the cases Parbatbhai Aahir v. State of Gujarat, Rajib Ranjan v. R. Vijaykumar and Binod Kumar v. State of Bihar (supra) relied by the

learned counsel of the applicant do not match with the present case. In the first case applicant filed the petition for quashing of criminal proceedings

on the basis of compromise. In the second case complainant filed complaint after dismissal of his civil suit and writ petition by the high court with cost.

In third case apex court rejected the complaint on the basis that no case of criminal breach of trust or dishonest intention of inducement was made out

from the complaint. While in this case as discussed above offence is prima facie made against applicant.

Hon'ble Apex Court in the case of State of Haryana and others V/s. Bhajan Lal and others reported in 1992 Supp. (1) SCC 335 held that :-“The

power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The

extraordinary or inherent powers do not confer an arbitrary jurisdiction on the

court to act according to its whim or caprice. The court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 CrPC 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, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised :

(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence,

justifying an investigation by police officers under Sections 156(1) of the Code except under an order of a Magistrate within the purview of Section

155(2) of the Code.

(3) 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.

(4) Where, the allegations in the F.I.R. 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.

(5) 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.

(6) 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.

(7) Where a criminal proceeding is manifestly attended with malafide 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.â??

This shows that complaint can only be quashed 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.

While in this case as discussed above, offence is prima facie made out from the complaint against present applicant. So it cannot be said that learned

Trial Court wrongly registered complaint against the applicant.

Hence, petition has no force and is hereby rejected.

Certified copy as per rules.