
(1993) 03 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 1904-M of 1992

Rakesh Kumar

APPELLANT

Vs

Vanish Kumar son of Mangat Rai, resident of Sangrur

RESPONDENT

Date of Decision : 31-03-1993

Acts Referred:

Citation : (1993) 2 RCR(Criminal) 599

Hon'ble Judges : G.S.Chahal, J

Advocate : Viney Mittal, Dinesh Goel, Advocates for appearing Parties

Judgement

G.S. Chahal, J.

1. Rakesh Kumar and others have come to this Court under Section 482 Cr.P.C. read with Article 227 of the Constitution of India and seek quashing of summoning order dated Jan. 9, 1991 passed by CJM Sangrur and for stay of the proceedings initiated by the respondent in the Court of CJM Sangrur during the pendency of the civil suit.

2. The facts briefly gathered from the complainant Annexure P1 may be narrated.

3. Parsini Devi, grandmother of the complainant executed a registered will in favour of complainant, and his brothers and father on March 9, 1990. Having learnt about the execution of this will, the accused made out a plan and forged a will on March 14, 1990 and produced some impersonator as Parsini Devi. The said Parsini Devi died on March 16, 1990 at the house of the petitioner. After the death of Parsini Devi, accused1 Rakesh Kumar filed a suit for declaration to the effect that he has become the absolute owner of the property left by Parsini Devi on the basis of the will dated March 14, 1990. That all the accused had taken active part in preparing the above said forged will and they had, thus, committed an offence complained of.

4. The accused petitioners claim that Parsini Devi had executed a will in favour of Rakesh Kumar who is son of Sagar Mall and the will had been witnessed by

Chanan Singh and Jagat Singh accused petitioners. That Rakesh Kumar filed a suit for declaration against the complainant for declaration that he was the owner of the land. That in order to avoid the decree in the suit, the complainant has filed complain Annexure P1. That the subject matter in the civil suit filed by Rakesh Kumar and the complaint filed by the complainant was the same. That the fact as to whether the will was genuine or not is a matter of evidence which has only to be decided by a civil court. That while the civil suit is to continue, summoning order has to be quashed.

5. With the suit a photocopy of the will had been filed and the counsel stated at the bar that original will has been filed on September 20, 1990. In this situation, the criminal Court having already taken the cognizance of the offence, the bar under Section 195 Cr.P.C. is not attracted. As per allegations made in complaint, offences complained of are prima facie made out. The genuineness of forgery or the will is a matter of evidence to be gone into by the trial Court, but the judgment of the civil Court shall be final and binding on the criminal proceedings side by the side in a case where the same set of facts gives rise to the cause of action under in the civil as well as criminal law.

6. The observations of Sekhon, J. in Vijay Kumar and anr. v. State of Punjab and ors., 1991(2) RCR 220 supports my view.

7. If, therefore, conclude that no case is made out for quashing of the complaint. A direction is, however, issued that the final order by the trial Court in the complaint shall either be passed simultaneously with the civil suit brought by Rakesh Kumar or after the decision of that suit. With these directions, the petition stands disposed of.