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In the Uttarakhand High Court

Case No : Criminal Revision No. 28 of 2009 and Government Appeal No. 8 of 2009

Suresh Kumar Puri — APPELLANT

Vs

State of Uttarakhand and another
 State of Uttarakhand Vs Smt. Nirja Pandhi and others — RESPONDENT

Date of Decision : 17-05-2012

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 161, 319, 397(2), 482
Penal Code, 1860 (IPC) — Section 120B, 420, 466, 467, 468

Citation : (2012) 3 UC 2337

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Advocate : Pankaj Miglani in Criminal Revision No. 28 of 2009 and Mr. P.S. Bohara, Brief Holder for the State in Government Appeal No. 8 of 2009, for the Appellant; Sanjeev Agarwal and Mr. H.M. Bhatia, Advocate for private respondent and Mr. P.S. Bohara, Brief Holder for the State in Criminal Revision No. 28 of 2009 and Mr. Sanjeev Agarwal and Mr. H.M. Bhatia, Advocate for private respondent in Government Appeal No. 8 of 2009, for the Respondent

Final Decision : Allowed

Judgement

Hon''ble Servesh Kumar Gupta, J.—The order rendered by learned Sessions Judge, Dehradun on dated 25.10.2008 / 22.11.2008 is under challenge through afore-titled five revisions and two Government Appeals. Since these revisions and appeals assailed the same order, hence, are being adjudicated by this single judgment of the Court. Learned counsel for either parties have put forth their respective submissions elaborately touching each and every aspect of the factual controversy pending for adjudication between them and this Court is not propensus to give its finding on each such aspect not because it is unable to express its views upon each and every aspect of the controversy but for the reason lest it may prejudice the opinion of the court below while adjudicating the criminal trial and also civil litigation regarding letter of administration / probate

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claimed by either parties on their alleged respective ''WILLs''. However, endeavour shall be made to touch those aspects, which are indispensable in order to ferret out the truth.

2. The whole controversy qua litigation in the court below between the parties is regarding inheritance of huge moveable and immoveable property left by deceased Surya Kant Puri, who breathed his last on 14.05.1993. He was issueless and his wife Dr. Pushpa Puri had already died way back in 1980. It transpires from the various papers and magazines available on record that he was a pioneer in the Board of Governor of a reputed public school based at Mussoorie, District Dehradun along with accused persons as well as his nephew Suresh Kumar Puri.

3. I have bestowed my careful and anxious consideration to the pros and cons of the matter, as advanced by learned counsel for the parties. From the entire record including the affidavits available on record, the Court has been able to gather the fact that deceased Surya Kant Puri was an old reputed man of tiny hill town, Mussoorie. All the accused persons, being residents of same town had their affiliation with Mussoorie Public School in the administrative capacity and were also closely and socially knitted together. In April, 1992 the thigh bone of Surya Kant Puri was fractured at Mussoorie in some accident. He was treated at Dr. Sudhir Gupta''s Nursing Home at Dehradun. After the treatment, he was discharged on 12.05.1992. On March 18, 1993 while Surya Kant Puri went to Union Bank of India, Mussoorie to deposit some amount, unfortunately he slipped while climbing the steps of the Bank and again his same thigh bone was fractured so since 18.03.1993, he was bed ridden in Mussoorie at his residence till 01.05.1993. On 02.05.1993, he was again admitted in Dr. Sudhir Gupta''s Nursing Home where he expired on 14.05.1993 at 09.00 a.m. This fact of his ailment has been disclosed in the affidavit of revisionist Suresh Kumar Puri filed before this Court, which can be a subject matter of evidence later in the trial court but this time the Court has no reason to disbelieve prima facie the facts deposed in the affidavit by Suresh Kumar Puri (informant), as it is writ large that since 18.03.1993, Surya Kant Puri was bed ridden and confined in his house for almost one and a half month itself so he could discern the fag end of his life.

4. It transpires that during this crucial period for almost one and half month, he was motivated by all the accused persons to create a Charitable Trust in the memory of his late beloved wife Dr. Puspha Puri in order to make proper use of his entire assets for the benevolent purposes. Any person of ordinary prudence could not resist the proposal put forth by accused persons in these circumstances. In order to implement the proposal requisite stamp papers were purchased on 07.04.1993 in the name of S.K. Puri (deceased) by accused persons and promptly a Deed was drafted narrating the laudable objects of the Trust bearing the title "Dr. Pushpa Puri Memorial Charitable Trust". So this Deed was executed on 07.04.1993 but the same was got registered in the office of Sub Registrar, Mussoorie on 29.04.1993.

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5. The case of the accused persons is that this was not merely a Trust Deed but the same was a composite deed including clause of "WILL" whereby Surya Kant Puri bequeathed his entire assets to the corpus of Trust after his death. This clause, divulging that Surya Kant Puri bequeathed his entire estate, is in the third paragraph of the said Deed and this fact was well within the knowledge of Surya Kant Puri before the Deed could be registered in the office of Sub Register. So this way, there was no offence of Sections 420, 466, 467, 468, 471, 120-B IPC allegedly committed by any of the accused persons where for they have been charge sheeted by the CB CID.

6. On the other hand, the version of complainant Suresh Kumar Puri (nephew of deceased) is that crucial clause which is the subject matter of entire controversy between the parties was inserted by common criminal intention on the part of the accused persons after death of Surya Kant Puri on 14.05.1993 much less before registration of the Deed during the life time of Surya Kant Puri and the task was got done in collusion with a delinquent clerk of the Sub Registrar Office namely Surymani. In the entire conspiracy hatched by accused persons. G.K. Jairath also played a significant role of cooperation by facilitating the accused persons in opening of bank Account No. CA3/325 in the State Bank of India, Mussoorie Branch in the name of "Dr. Pushpa Puri Memorial Charitable Trust" on 07.04.1993. G.K. Jairath was probably a Branch Manager at the relevant time and he was also relative of deceased Surya Kant Puri and thus, he is also relative of the complainant Suresh Kumar Puri. It is pertinent to mention that on 07.04.1993 when the said bank account was opened "Dr. Pushpa Puri Memorial Charitable Trust" was not at all in existence but with the active foul cooperation extended by G.K. Jairath said account could be opened on 07.04.1993 with all manipulations.

7. This Court does not consider it essential to magnify all those manipulations / incongruities at this stage and leave it to be analyzed by the trial court. The alleged manipulations and forgeries to the extent of insertion of the Clause of bequeathing the entire assets of Surya Kant Puri in the Trust Deed were highlighted first time by Suresh Kumar Puri by moving an application u/s 156(3) Cr.P.C. on 28.05.1998 to the Chief Judicial Magistrate, Dehradun whereupon the order was made to register the case and investigate the same. After this order, investigation was changed into several hands of Inspectors / Sub Inspectors. It appears that all the accused persons, being affluent and influential (as disclosed by their learned counsel during the course of arguments), could manage to curb the result of the investigation in their favour. So when Suresh Kumar Puri could smell the impact of influence of these accused persons in investigation, he ultimately succeeded to ensure make over the investigation to the CB CID (a more fair and strong agency). This premier agency entered into deep investigation including examination of several papers / signatures through Forensic Science Laboratory, Agra and Central Forensic Science Laboratory. The matter was found the fittest one, substantiating the allegations thrown by Suresh Kumar Puri against all the accused persons prima facie true. Thus, charge sheet

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was submitted against ten persons for the offence u/s 420, 466, 467, 468, 471, 120-B. These ten persons are namely D.P. Singh, Vimal Sharma, Harish Sharma, Nirja Pandhi, Anil Pandhi, Suresh Chandra Agarwal, Karan Singh Chauhan, Balbir Singh, Nirmal Gaur and Suryamani (a clerk in the office of Sub Registrar).

8. All the accused persons were asked to stand trial by the Magistrate by way of framing charge against all of them. A separate set of charge was framed against Suryamani. Out of these ten, 8 accused persons filed different revisions before the court of Sessions, Dehradun challenging the order of levelling charge against them. Two accused namely Nirmal Gaur and Karan Singh Chauhan did not file any revision against the order of levelling of charge, so trial ought to have been proceeded or pending against these accused persons in the court below. Learned Sessions Judge vide impugned order, allowed the revisions and set aside the order of levelling of charge passed by the learned Magistrate on 10.06.2008.

9. It appears from the averments stated by Suresh Kumar Puri in his affidavit filed along with the revisions before this Court that hearing of the criminal revisions filed by accused persons was in progress without impleading him (informant / complainant) as opposite party but he could know through his lawyer, who was eventually present during the course of hearing in the court of Sessions Judge so he promptly objected and requested the learned Sessions Judge to provide him an opportunity for opposing these revisions but the Sessions Judge was not inclined, so he was constrained to move to this Court and got stay order against Sessions Judge from pronouncement of verdict in the said revisions. He had manifested the gesture and intention of the Sessions Judge, as if, he is going to allow those revisions and quashing the levelling of charge against the accused persons. He had even dictated the impugned order soon after extending the formal hearing on 25.10.2008 but he was restrained to pronounce the said judgment because of the stay order granted by this Court. However, later the stay order was vacated, on the technical ground that Suresh Kumar Puri did not move any transfer application, so learned Sessions Judge pronounced the judgment on 22.11.2008, which he already dictated on 25.10.2008, as is manifested from the last page of the impugned order itself.

10. Feeling disgruntled, Suresh Kumar Puri has filed these five revisions titled above while simultaneously, State Government has also filed two appeals against only five accused persons namely Nirja Pandhi, Suresh Chandra, D.P. Singh, Vimal Sharma and Harish Sharma. State has not filed any appeal against Balbir Singh, Anil Pandhi and Suryamani for the reasons best known to the Government. However, Suresh Kumar Puri has filed revisions against all the eight accused persons, who have been discharged by learned Sessions Judge by quashing the order of levelling charge against them.

11. The most vital question, which has been embroiled in the murk, is whether crucial clause "And the Managing Trustee hereby bequeath his entire assets to the corpus of this Trust after his death" inserted in the Deed was within the knowledge of Chief Managing Trustee Surya Kant Puri or it was inserted without

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his knowledge during his lifetime or even after his death.

12. It is now so much so admitted that the above clause was inserted after the said Deed had been fully drafted because this much is apparent from looking upon the said clause in the Deed itself. The grounds for this proposition of insertion are sundry, which have been revealed by CB CID during its investigation. The Court also do accept those grounds but the only question remains whether that clause was inserted within knowledge and notice of Surya Kant Puri or before the document could be produced for registration in the concerned office or it was inserted after registration of the said instrument within the span of period from 29.04.1993 to 14.05.1993 or the same was inserted after the death of Surya Kant Puri at any time after 14.05.1993. In both latter eventualities, collusion of Sub Registrar office through Suryamani was there because without his collusion, it was not possible to insert that clause after registration of the same.

13. Learned counsel for the respondents has vociferously contended that Surya Kant Puri, Chief Managing Trustee, would not have created this benevolent Trust for a number of laudable objects in penury because the same was in the memory of his beloved wife and he had massive wealth and at the same time, he was at the fag end of his life.

14. This argument is impressive to some extent. It is true that circumstances engrossing Surya Kant Puri could drive him to bequeath his entire property for effective functioning of the Trust but this Court is not oblivious from the general tendency of common man that any person, instead of bequeathing his entire property to a Trust in Trust Deed itself, would prefer to draft a separate Deed bequeathing his entire moveable and immoveable property disclosing the details of the same. Besides, everyone has a tendency to retain ownership and possession on each and every property with him during his lifetime and he prefers to make categorical averment to this effect in his WILL as to make understanding of everyone clear. These averments probably could not be made in the said Deed because the space for insertion was very narrow in the already drafted Deed but in such eventuality, nothing prevented Surya Kant Puri to ask his associates to draft a separate Deed and that was never done. This way, the questioned clause in such brief words is doubtful. It is shrouded with mystery and the delinquent can be none other but the accused persons. The view expressed by the learned Sessions Judge in the impugned order that since it is not clear in whose possession this Deed was between 07.04.1993 to 29.04.1993, so no specific responsibility can be fixed upon any of the accused persons is quite erroneous and away from reality. It has been submitted by learned counsel of defence that all the accused persons are affluent and socially well knitted in a small town of Mussoorie. That apart, they have affiliation with the reputed public school at Mussoorie either in the managerial capacity or otherwise directly or indirectly. Surya Kant Puri was also in prominent administrative capacity of the said school. Only this much can be accepted that deceased might have made up

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his mind to bequeath his entire property for the good and effective functioning of the Trust, the office whereof was situated in the school premises itself. But at the same time, approach of human mind is to execute a separate Deed for bequeathing his entire assets elaborating details thereof so as to make his intention clear regarding each and every aspect of moveable and immoveable property.

15. The deed was executed on 07.04.1993 when Surya Kant Puri was confined to bed on account of fracture in his thighbone. Mere fracture in bone though of second time could not be anticipated so fatal as Mr. Puri could discern the end of his life within a month. In such circumstance, a normal prudent man could hope for recovery from affliction and then to make financial arrangement for effective functioning of the Trust in his lifetime and afterward too. He could not have directed his associate trustees to insert the impugned clause in the Trust Deed in such a surreptitious manner.

16. Further this aspect cannot be overlooked that Surya Kant Puri was bed ridden since 18.03.1993 to 01.05.1993 with two times fracture in his same thigh bone. So after execution of the Deed on 07.04.1993, it was beyond imagination that the Deed might have been in his imminent possession showing distrust to his close associates, who are accused in the case. There is a strong probability that when these accused persons discerned that physique of Surya Kant Puri was deteriorating and he was shifted to Dr. Sudhir Gupta''s Nursing Home, so they either just before registration of Deed i.e. on 29.04.1993 or after shifting him to Nursing Home or even after his death, inserted the crucial clause in the Deed in order to make out the arrangement of assets possessed by Surya Kant Puri in his lifetime or left by him after his death.

17. In the opinion of this Court, there is yet another strong possibility of insertion of said clause after death of Surya Kant Puri, as in the offices of Sub Registrars where any Deed is registered the practice prevails not to return the Deed immediately after its registration or even soon after, it is retained by the office of Sub Registrar for weeks and months together for the reasons best known to them. This alleged Trust Deed was registered on 29.04.1993 while Surya Kant Puri breathed his last on 14.05.1993, so in all probabilities the Deed could not be returned before death of Mr. Puri and it remained with the office of Sub Registrar for quite a good time after his death. In this eventuality, which occurred because of the sudden death of Mr. Puri, rest of the Trustees, who were none other than accused persons hatched a conspiracy to insert the crucial clause of bequeath in order to impede ways of other persons to claim the property of the deceased. And this could have been done with the active collusion of Suryamani that is why CB CID has submitted charge sheet against him with formidable evidence collected by it during the course of investigation.

18. There are other significant aspects also and the attention of this Court has been drawn towards them. A register was prepared for recording the minutes of every meeting pertaining to the Trust. In the register, first meeting was shown to

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be held on 10.04.1993. It is yet another very significant feature that the Trust could not come into existence on 10.04.1993, as the Deed could be registered only on 29.04.1993, then how this first meeting could be held under name and style ''First meeting of the management committee of Dr. Pushpa Puri Memorial Charitable Trust''. Even if it is assumed for a moment that Deed had been drafted on 07.04.1993 so meeting was convened on 10.04.1993 before registration of the Trust Deed then it is very amazing that Surya Kant Puri, Chairperson, who was alive on that day and on whose residence the meeting was organized, did not put his signature in front of his name while all the accused persons had put signatures in front of their respective names including G.K. Jairath. It reflects that this first meeting on 10.04.1993 did not take place at all on that date but it was probably held after death of Surya Kant Puri but shown falsely to be held on 10.04.1993 that is why minutes of meeting does not bear signature of Surya Kant Puri while he was Chairperson of that meeting.

19. If the crucial clause of bequeathing the assets was inserted within notice of Surya Kant Puri then there was no impediment to write the title of the Deed as "Trust-cum- Bequeath Deed" or "Trust Deed-cum-WILL". Since this clause was inserted in utter hurry and panic, so this omission was bound to occur on the part of the accused persons to make them successful for grabbing the entire property of Surya Kant Puri for running of Trust. Possibly, they knew that Surya Kant Puri had already been executed a registered WILL on dated 27.06.1986 in favour of Suresh Kumar Puri (nephew) and few other relatives and it was natural for them to have this knowledge because Suresh Kumar Puri was also in the managerial block of the said school along with accused persons. Had this crucial clause been in the notice and knowledge of Surya Kant Puri then he would have definitely thought to revoke his earlier WILL mentioned above but the same could not have been done on account of utter hurry and panic and also because there was no space available to write any thing like revocation of the earlier WILL in addition to questioned clause.

20. It has been argued on behalf of the respondents that they did not have any personal interest in the property of deceased. If insertion of the clause is given weight and recognized as genuine, it is only the Trust, which will be benefited. This contention is wholly untenable because if the huge property left by Surya Kant Puri comes under the ownership and possession of the Trust then it also comes in the indirect possession of the accused persons and possibility cannot be ruled out that accused persons will be in a position to derive benefit from the same for their own personal use with the help of other clauses entailed in the Deed which authorizes them to dispose of the property of Trust in any manner whatsoever according to their decision. So they could well be in collusion in order to disburse the property of the Trust in one way or other for their own benefit albeit under the veil of social good.

21. It appears that beans could not be spilled for a long time because G. K. Jairath, Bank Officer, was actively involved in collusion and conspiracy. It further

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appears that when G.K. Jairath parted his ways from rest of the accused persons on account of differences developed between them, then he disclosed everything to Suresh Kumar Puri. Otherwise, there is no reason for G.K. Jairath for not offering any reply to the queries put forth by CB CID on 31.03.1999 while his statement was recorded u/s 161 Cr.P.C. In the third meeting of the Trust (minutes of the first meeting falsely recorded as has been mentioned above) purported to be held on 08.08.1993 under the Chairmanship of G.K. Jairath himself, several resolutions were passed to take appropriate steps for making over the ownership and possession of the property left by deceased Surya Kant Puri in favour of the Trust. He has put his signature in front of his name along with members of the Trust and the signature of G.K. Jairath was found to be genuine. Besides, he has signed upon several other papers of meetings of the Trust recorded in the same register and in those meetings too, there was mention for alleged bequeathing of the property of Surya Kant Puri then showing his ignorance about the questioned clause in the Deed is astonishing. It indicates that he is totally telling a white lie to exclude his complicity in the crime but his absolvement can well be answered by invoking the provision of Section 319 Cr.P.C. by the trial court (if deemed proper).

22. Now, coming to the legal aspect of the matter, learned counsel for the revisionist has relied upon the precedent of four Judges Bench of Hon''ble Apex Court in the case of V.C. Shukla Vs. State through C.B.I., wherein it has been categorically held that the order of framing charge against the accused person is an interlocutory one and is not interfereable in appeal. When even in the appeal, the order of framing charge cannot be set aside, then how it can be set aside in revision by discussing each and every minute detail of facts by learned Sessions Judge. Totally unsubstantial order passed by the learned Sessions Judge takes this Court aback. At the same time, the impugned order has been passed transgressing the jurisdiction conferred upon him by the Code of Criminal Procedure.

Learned counsel for the accused respondents relied upon two precedents, which are as under:

i. Bhaskar Industries Ltd. Vs. Bhiwani Denim and Apparels Ltd. reported in 2001 SCC (Cri.) 1254.

ii. Ramchandra Vs. State of M.P., .

I have gone through the ratio laid down by the Hon''ble Apex Court in the case of Bhaskar Industries Ltd. In this case the Hon''ble Court has observed thus:

"The interdict contained in Section 397(2) is that the powers of revision shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test laid down by this Court through a series of decisions is this: If the contention of the petitioner who moves the superior court in revision, as against the order under

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challenge is upheld, would the criminal proceedings as a whole culminate? If they would, then the order is not interlocutory in spite of the fact that it was passed during any interlocutory stage."

This was a case of N.I. Act where learned Magistrate directed the accused to be released on bail if arrested and also directed him to be present in the court for the purpose of furnishing security by executing a bond of Rs. 5000/- . A revision was filed against the said order and the learned Sessions Judge passed the following order:

"From the analysis of evidence above (sic) it is clear that the impugned order of the trial court is not in accordance with law. Thus, the question under consideration is decided in negative. On the basis of the aforesaid analysis I reach a conclusion that the impugned order of the trial court being not in accordance with law does not deserve to be maintained. Therefore, this revision petition is allowed and the impugned order of the trial court dated 28.4.2000 is set aside."

So it is amply clear that the Hon''ble Apex Court laid down the ratio (supra) in a quite different context. It was merely a question of maintenance of order for granting exemption from personal appearance and furnishing a bond. While in the instant case, learned Sessions Judge did not hesitate to quash the order of levelling charge against all the accused persons in exercise of the powers of revision u/s 397(2) Cr.P.C., even the High Court could have been reluctant to do so in exercise of powers u/s 482 Cr.P.C. because time and again the Hon''ble Apex Court has laid down several parameters for quashing of the charges against accused persons. In the present case, where the charge sheet has submitted by CB CID after collecting formidable evidence against all the accused persons, then it was quite unwarranted and unjust for the learned Sessions Judge to quash the order of levelling charge in exercise of his powers u/s 397(2) Cr.P.C. much less lacking of jurisdiction.

In the next ruling relied upon by the learned counsel, this Court is of the view that it is a precedent of single Judge of Madhya Pradesh High Court and this law cannot overrule the law propounded by the Hon''ble Apex Court in the V.C. Shukla''s case (supra).

Saving the innumerable aspects of the controversy between the parties from any further observation or comment, this Court is of the firm view that impugned order passed by the learned Sessions Judge is liable to be quashed with lock, stock and barrel. Accordingly, all the appeals and revisions are allowed. Impugned judgment and order dated 25.10.2008 /22.11.2008 passed by Sessions Judge, Dehradun is hereby quashed. All the record be remitted back to the court below for proceeding the trial ahead quickly because it has already been delayed by abuse of process of law on the part of accused persons. It is made clear that any observation / perception of this Court made hereinabove will not prejudice the trial court while adjudicating the controversy between the

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parties either in civil or criminal side and courts below will be at full liberty to take their own independent view, irrespective of view of this Court which has given vent to adjudicate the instant revisions and appeals.

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