

HIRA LAL & ORS.

v.

STATE OF U.P. & ORS.

(Criminal Appeal No. 662 of 2009)

APRIL 8, 2009

[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]

Code of Criminal Procedure, 1973 – s.482 – Jurisdiction under – Parameters of interference with criminal proceeding by High Court – Discussed – On facts, there were allegations of execution of forged Will – Complaint petition in this regard was dismissed by a reasoned order – Second complaint petition reiterating same allegations as made in first complaint petition – Maintainability of – Held: Not maintainable – Dispute was essentially civil in nature and criminal court could not determine the same – In any event, the second complaint petition did not disclose any exceptional case and no fresh fact was brought to notice of the court – Hence, summons issued by Magistrate on the second complaint petition was wholly illegal and without jurisdiction – High Court erred in rejecting the application filed by accused u/s.482 CrPC – Penal Code, 1860 – ss.420, 462, 467, 468 and 471 – Will.

Appellants and respondent no.3 are co-sharers in certain property. Dispute arose between them with regard to validity of a registered Will. *Prima facie*, a Civil Court found the said Will to be genuine. A complaint petition filed by respondent no.3 u/ss. 420, 462, 467, 468 and 471 IPC on the premise that the said Will was forged and fabricated was dismissed by the Magistrate. Revision application filed thereagainst was also dismissed. Subsequently respondent no.3 filed application u/s.156(3) CrPC making similar allegations of forged Will, whereupon the Magistrate issued summons against the appellants. Appellants filed application u/s. 482, CrPC.

- A The High Court declined to go into the merits of the matter and dismissed the application. Hence the present appeal.

Allowing the appeal, the Court

- B HELD:1. The parameters of interference with a criminal proceeding by the High Court in exercise of its jurisdiction under Section 482 of the Code are well known. One of the grounds on which such interference is permissible is that the allegations contained in the complaint petition even if given face value and taken to be correct in their entirety, commission of an offence is not disclosed. The High Court may also interfere where the action on the part of the complainant is *mala fide*. [Para 10] [573-B-D]

- D *State of Haryana & Ors. v.. Ch. Bhajan Lal & Ors. (1992) Supp 1 SCC 335; Pratibha Rani v. Suraj Kumar and Anr. (1985) 2 SGC 370 and R. Kalyani v. Janak C. Mehta & Ors. (2009) 1 SCC 516, referred to.*

- E 2. In the present case, the dispute between the parties is essentially civil in nature. Whether the Will in question is surrounded by suspicious circumstances or not is a matter which may appropriately fall for determination in a testamentary proceeding. The question as to whether the transactions are genuine or not would fall for consideration before the Civil Court. What was the share of the respective co-sharers is a question which is purely a civil dispute; a criminal court cannot determine the same. [Paras 11 and 13] [573-D-E; 575-B-C]

- G 3. The order passed by the Magistrate in the first complaint petition is not cryptic. Reasons have been assigned in support thereof. In a situation of this nature, a second complaint petition could not have been filed. The second complaint petition filed by respondent no.3

does not disclose any such exceptional case. It reiterated the same allegations as were made in the first complaint petition. No fresh fact was brought to the notice of the court. The core contention raised in both the complaint petitions was alleged execution of a forged Will. It was not a fit case where cognizance of the offence could have been taken or any summons could have been issued. [Paras 14, 15 and 16] [575-C-D; 576-C-E]

Mahesh Chand v. B. Janardhan Reddy & Anr. (2003) 1 SCC 734, referred to.

Case Law Reference:

(1992) Supp 1 SCC 335 referred to	Para 11
(1985) 2 SGC 370 referred to	Para 11
(2009) 1 SCC 516 referred to	Para 11
(2003) 1 SCC 734 referred to	Para 14

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 662 of 2009.

From the Judgment & Order dated 08.07.2008 of the Court of Judicature at Allahabad in Criminal Misc. application No. 16857 of 2008.

Vineet Dhanda, J.P. Dhanda and Raj Rani Dhanda for the Appellants.

Pramod Swarup, Savitri Pandey, Rajeev Dubey, Kamendra Mishra and Vishwajit Singh for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Appellants and the respondent No.3 (complainant) are co-sharers. Raghuvansh Tyagi, father of respondent No.3, and

A Tika Ram Tyagi, father of Smt. Suman Devi were co-khatedars in respect of Khasra No.59 having an area of 2.0920 hectares of land situated in village Bhangel Begampur, PS Phase II, Noida.

B Father of Respondent No.3 and Suman Devi were having 3/16th share in the aforementioned khasra. According to the complainant, prior to 1997 a mutual agreement was entered into amongst the co-sharers, pursuant whereto, 2000 sq. yds. of lands was allotted for the purpose of residential house to each of the co-sharer. The complainant on his allotted land, C allegedly constructed a house and started living there. He also said to have constructed 10 shops. Tika Ram Tyagi is said to have constructed two houses on 600 sq. yards of land and his sons also constructed pucca houses on the remaining 1400 sq. yds. of land in November 2006.

D 3. Tika Ram Tyagi executed a registered deed of sill on or about 24.2.1997 bequeathing all his moveable and immoveable properties in favour of his grand sons.

E Husband of Smt. Suman Devi, Anil Kumar is said to have signed the said Will as one of the attesting witnesses.

On or about 1.8.2002, however, another Will was executed by Tika Ram Tyagi who had been suffering from throat cancer in respect of the same property in favour of Smt. Suman Devi.

F Appellant No.1 Hira Lal was a witness to the said Will.

G 'It is stated that Suman Devi later on executed a 'Bainama' in favour of Ashok Kumar Tyagi, younger brother of appellant No.1 on the basis of the said Will. It stands admitted that in terms thereof Suman Devi got her name mutated in the Land Revenue Record on or about 26.9.2002. She, allegedly, sold nine shops in favour of Ashok Kumar Tyagi by reason of a 'Bainama' dated 22.10.2002. Yet again she sold another shop on 23.10.2002 by reason of another 'Bainama' in favour of

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Ashok Kumar Tyagi.

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4. A civil suit was filed by the respondent in the court of Civil Judge, Senior Division, Gautam Budh Nagar, *inter alia*, praying for cancellation of the said Will on the premise that the said Will was a forged one. The said suit was dismissed by an order dated 29.3.2006. An appeal thereagainst is said to be pending.

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Prior thereto, Respondent No.3 filed a complaint petition in the Court of ACJM, Gautam Budh Nagar which was marked as Complaint Case No.212 of 2003 under Section 420, 462, 467, 468 and 471 IPC, *inter alia*, contending that the Will dated 1.8.2006 purported to have been executed by Tika Ram Tyagi in favour of his daughter Suman Devi was a forged and fabricated document. The learned ACJM, Gautam Budh Nagar, however, dismissed the said complaint petition, stating :

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“Case called. Complainant is not present. No record has been submitted in compliance of the earlier order. File be put up at 3 pm for order.

Photocopy of the Khatauni has been submitted by the complainant in which the names of Mukesh and other co-shareholders are mentioned in Khata Khatauni No.22, Khet No.59. Only becoming a co-shareholder of the land does not prove a sale deed or Will as fake or sham document. Since Tika Ram's name is also one of the co-shareholders and the alleged sale deed and Will has not been declared to be fake or bogus by any other court, therefore, in the light of the record available in case file and oral evidence, no *prima facie* case is made out against the accused persons.

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The complaint under Section 203 is hereby rejected.”

5. We may place on record that the learned ACJM by an order dated 13.2.2003, *inter alia*, opined that 'no record was available in the file which could prove that the said Deed of Will

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A are *prima facie* fake and bogus'. A revision application was filed thereagainst by respondent No.3 which was dismissed by an order dated 8.4.2004.

B 6. Respondent No.3 thereafter filed another application under Section 156(3) of the Code of Criminal Procedure, 1973 (Code) making similar allegations. However, in the said complaint petition even the execution of the bienamas was alleged to be fraudulent acts on the part of the accused respondent, contending :

C "That the opponent Suman did not have any right to dispose of the plot with Khasra No.59 and no share of the plot of Khasra No.59 came to the share of Suman.

D That opponent Suman played fraud first did Karam Chand and Dayanand and without the permission of Tika Ram got the Will of Tika Ram in her favour with regard to the property in Khasra No.59."

E Learned First Additional Chief Judicial Magistrate by an order dated 8.7.2008 issued summons which reads as under :

F "Because your presence is required to make the reply of the charge under Section 420, 467, 468, 471, 506 IPC, therefore, you are directed to appear either in person or through advocate before the concerned court on 8.7.08. Fail not to do so."

G 7. Appellants filed an application under Section 482 of the Code which by reason of the impugned judgment has been dismissed. The High Court in its impugned judgment refused to go into the merit of the matter that the defence of the accused cannot be considered at that stage and they can raise all contentions at the time of framing of the charges.

H 8. Mr. J.P. Dhandha, learned counsel appearing on behalf of the appellant, would contend that the High Court committed

a serious error insofar as it failed to take into consideration that the second complaint petition being not maintainable, the summons issued by the court of ACJM was wholly illegal and without jurisdiction.

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9. Mr. Pramod Swarup, learned counsel appearing on behalf of the State, and Mr. Vishwajit Singh, learned counsel appearing on behalf of respondent No.3 would, however, support the impugned judgment.

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10. The parameters of interference with a criminal proceeding by the High Court in exercise of its jurisdiction under Section 482 of the Code are well known. One of the grounds on which such interference is permissible is that the allegations contained in the complaint petition even if given face value and taken to be correct in their entirety, commission of an offence is not disclosed. The High Court may also interfere where the action on the part of the complainant is *mala fide*.

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11. The dispute between the parties is essentially civil in nature. The Will in question is a registered Will. Whether it is surrounded by suspicious circumstances or not is a matter which may appropriately fall for determination in a testamentary proceeding. *Prima facie*, a Civil Court has found the said Will to be genuine. A complaint petition filed by the third respondent has been rejected. A revision application filed thereagainst has also been dismissed.

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In *State of Haryana & Ors. v. Ch. Bhajan Lal & Ors.* [1992 Supp (1) SCC 335], this Court, relying on *Pratibha Rani v. Suraj Kumar and Anr.* [(1985) 2 SGC 370], stated that for the purpose of exercising its power under Section 482 of the Code of Criminal Procedure to quash a FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same.

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In *R. Kalyani v. Janak C. Mehta & Ors.* [(2009) 1 SCC

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A 516], this Court stated the propositions of law, thus :

B “(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

C (2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

D (3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

E (4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.”

It was furthermore observed :

F “10. It is furthermore well known that no hard and fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by the Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.”

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12. Mr. Singh would argue that Tika Ram Tyagi having executed the Will in respect of his own share, the appellants could not have transferred the shops in favour of third party relying on or on the basis thereof.

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13. The question as to whether the transactions are genuine or not would fall for consideration before the Civil Court as indisputably the respondent No.3 has filed a civil suit in the court of Civil Judge, Gautam Budh Nagar wherein allegedly an interim injunction has been granted. What was the share of the respective co-sharers is a question which is purely a civil dispute; a criminal court cannot determine the same.

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14. The order of learned ACJM in his order dated 2.4.2003 is not a cryptic one. Reasons have been assigned in support thereof. In a situation of this nature, in our opinion, a second complaint petition could not have been filed.

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Strong reliance has been placed by Mr. Singh on a decision of this Court in *Mahesh Chand v. B. Janardhan Reddy & Anr.* [(2003) 1 SCC 734], wherein it was opined that second complaint was not completely barred in law. This Court, however, in that decision itself held that the second complaint can lie only on fresh facts and/or if a special case is made out therefor, stating :

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“19. Keeping in view the settled legal principles, we are of the opinion that the High Court was not correct in holding that the second complaint was completely barred. It is settled law that there is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reasons, the Magistrate under Section 204 Cr.P.C. may take cognizance of an offence and issue process if there is sufficient ground for proceeding. As held in *Pramatha Nath Talukdar* case second complaint could be dismissed after a decision has been given against the complainant in previous matter upon a full consideration of his case.

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- A Further, second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which
- B could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced. In the facts and circumstances of this case, the matter, therefore, should have been remitted back to the learned Magistrate for the purpose of arriving at a finding
- C as to whether any case for cognizance of the alleged offence had been made out or not.”

- D 15. The second complaint petition filed by the third respondent does not disclose any such exceptional case. It reiterated the same allegations as were made in the first complaint petition. No fresh fact was brought to the notice of the court. The core contention raised in both the complaint petitions was alleged execution of a forged Will by Tika Ram Tyagi.

- E 16. For the reasons aforementioned, we are of the opinion that it was not a fit case where cognizance of the offence could have been taken or any summons could have been issued. The impugned judgment, thus, cannot be upheld. It is set aside accordingly. The appeal is, therefore, allowed.

- F B.B.B. Appeal allowed