

(2014) 09 AHC CK 0091

Allahabad High Court

Case No: Criminal Misc. Writ Petition No. 16557 of 2014

Bindu Devi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Sept. 19, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 156(3)
- Penal Code, 1860 (IPC) - Section 419, 420, 467, 471
- Uttar Pradesh Land Revenue Act, 1901 - Section 34

Citation: (2014) 9 ADJ 439 : (2014) 87 ALLCC 734

Hon'ble Judges: V.K. Shukla, J; Shashi Kant, J

Bench: Division Bench

Advocate: Sheo Ram Singh and C.J. Yadav, Advocate for the Appellant; Ashish Kumar Srivastava, Advocate for the Respondent

Judgement

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1. Brief background of the case as is emanating from the pleadings as set out in the writ petition and annexures appended thereto that a unregistered will deed was shown to have been executed by the mother of Harshwardhan Singh namely Smt. Dev Kumari Singh on 8.10.1993 in favour of Budhoo @ Ramesh Singh. Said Budhoo @ Ramesh Singh further has executed registered power of attorney relating to the said property in question in favour of Dinesh Mishra S/o Heera Lal on 30.10.2000 and based on the said power of attorney Dinesh Mishra S/o Heera Lal got mutated name of Budhoo @ Ramesh Singh on 4.11.2000 and then has executed registered sale deed of the disputed property in favour of Smt. Uma Rai W/o Ram Nagina Rai on 23.8.2004 in which Bindu Devi W/o Dinesh Mishra is marginal witness.

Harshwardhan S/o late Diwakar Singh, respondent No. 4 after acquiring knowledge of the fact that entire proceedings in reference of execution unregistered will deed; in respect of registered power of attorney and in respect of execution of sale deed; all are forged and manipulated proceedings and that at no point of time his mother Smt. Dev Kumari Singh has ever proceeded to execute any will deed worth name in favour of Budhoo @ Ramesh Singh S/o late Lal Bahadur Singh and entire proceedings were designed proceedings in order to grab the property in question, after death of Smt. Dev Kumari Singh on 5.9.1994, initiated proceeding under Section 34 of the Land Revenue Act then Tehsildar concerned on 6.1.2005 passed order mentioning therein that the order dated 4.11.2000 of mutation has been obtained by fraud and accordingly same has been cancelled. The informant thereafter after finding that entire things have been manipulated and fabricated instituted suit being Civil Suit No. 49 of 2005 for declaration to declare the will deed dated 8.10.1993 and the sale deed dated 23.8.2004 as void so that none of his rights are effected. Said suit in question has been pending and therein written statement has been filed by dependent Nos. 1 on 31.6.2007.

2. The first informant in his wisdom in his turn as transaction in question was totally forged and manipulated and based on the said manipulation, as there has been apparent cheating and he has been deprived of his lawful property has proceeded to lodge First Information Report on 25.7.2014 registered as Case Crime No. 371 of 2014 U/S 419, 420, 467, and 471 IPC P.S. Cantt. District Varanasi. The mind set for lodging FIR has been that the civil suit would only clear the clouds that has been created on his title but what about an offence that has been committed under the Indian Penal Code, has proceeded to lodge FIR by moving application under Section 156(3) Cr.P.C. and based on the same FIR has been lodged, thus impelling the petitioners to be before this Court with the prayer quoted above.

3. Learned counsel for the petitioner, Sri Sheo Ram Singh, submitted before this Court that dispute in question is primarily of civil nature and whatever issues are being raised by respondent No. 4 Harshwardhan Singh in the suit in question virtually same issues have been mentioned in the impugned FIR, in view of this, this Court should in the facts of the case, come to the rescue and relieve of the petitioners and should proceed to quash the impugned FIR.

4. Request that has been made by the petitioner has been resisted by the learned AGA as well as Sri Ashish Kumar Srivastava, Advocate appearing for Caveator by contending that it is true that civil suit has been filed and since in the civil suit, relief that would be accorded to him would be the relief of declaration of his right thus clearing the doubts that has been sought to be created on his title but once criminality angle is also there and an offence in question has been committed, as defined under the Indian Penal Code then accused persons, who have in designed manner grabbed the property in question, are liable to be punished and the informant, by lodging FIR has only set the criminal justice system in motion for

bringing guilty persons to book. In this background, it has been submitted that perusal of the FIR, clearly discloses cognizable offence, as such writ petition should be dismissed.

5. This Court has the occasion to peruse the FIR as well as plaint of the suit No. 49 of 2005 (Harswardhan Singh v. Budhoo @ Ramesh Singh and others). In the plaint case so filed, precise case of the plaintiff of the aforesaid suit i.e. Harshwardhan Singh is that at no point of time, his mother has ever executed any Will deed in favour of Budhoo @ Ramesh Singh and in designed manner Budhoo @ Ramesh Singh has proceeded to create fictitious power of attorney in favour of Dinesh Mishra S/o Heera Lal on 30.10.2000 and thereafter based on the said fictitious power of attorney initially mutation proceeding has been taken on 4.11.2000 and then sale deed in question has been executed in favour of Smt. Uma Rai W/o Ram Nagina Rai wherein Bindu Devi, petitioner No. 1 and Satendra Pratap Singh have been shown as marginal witnesses of the sale deed. Prayer that has been made in the plaint in question is for declaration of the said unregistered Will deed dated 8.10.1993 as nullity and consequential sale deed dated 23.8.2004 as void so that his title may not at all be effected by any one over the said plot Nos. 214, 215 and 216 area 3216 sq ft. situated at village Khajoori, Pargana Shivpur, district Varanasi. Even if the suit in question is decreed, the ultimate relief that would be accorded to the plaintiff of the said suit would be i.e. his right over the plot in question would be cleared from all doubts but even after decreeing of the suit guilty persons who have allegedly indulged in such criminality would not at all be punished as for an offence committed under Indian Penal Code and other laws there is a procedure provided for under the Criminal justice system i.e. by lodging of FIR and then by carrying out investigation and then to file police report before the concern Court with the outcome of investigation and then concern Court takes up the matter.

6. Issue is that merely because a civil suit has been filed and therein issues that has been so raised is pertaining to genuinity of said transaction and pertaining to same transaction, a FIR has also been lodged mentioning therein similar set of allegations, can same be a ground for quashing of the FIR.

7. At this stage, we may usefully note that sometime a case may apparently look to be of civil nature or may involve a commercial transaction but such civil disputes or commercial disputes in certain circumstances may also contain ingredients of criminal offences and such disputes have to be entertained notwithstanding they are also civil disputes. In this context, we may reproduce a passage from the judgment of Apex Court in the case of [Md. Ibrahim and Others Vs. State of Bihar and Another](#), :

"8. This Court has time and again drawn attention to the growing tendency of the complaints attempting to give the cloak of a criminal offence to matter which are essentially and purely civil in nature, obviously either to apply pressure on the accused or out of enmity toward the accused, or subject the accused to harassment.

Criminal Courts should ensure the proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes [see [G. Sagar Suri and Another Vs. State of U.P. and Others](#), and [Indian Oil Corporation Vs. NEPC India Ltd. and Others](#),].

8. The aforementioned judgment has been followed in the case of [Arun Bhandari Vs. State of U.P. and Others](#), and therein it has been mentioned that it cannot be said that dispute is purely civil in nature on the allegations made in the FIR. Apex Court has clearly mentioned that in such matters, i.e. while exercising authority under Article 226, the Court should adopt a very cautious approach.

9. Once such are the parameters that has been set up by the Apex Court then on the said settled parameters, we have proceeded to look into the facts of the present case, as to whether case in hand falls within the category of purely civil dispute or same has the taint of criminality also.

10. Facts of the case as has been narrated in the FIR, if true, are shocking as here precise case of first informant has been to the effect that his mother late Smt. Dev Kumari Singh at no point of time has ever proceeded to execute any registered Will deed in favour of Bhudoo @ Ramesh Singh and it has also been stated that there was no reason to execute unregistered will deed in favour of Bhudoo @ Ramesh Singh and the said Bhudoo @ Ramesh Singh was not even remotely connected with Smt. Dev Kumari Singh, and she during her life time, initially has been staying with her husband at Hooghly West Bengal by virtue of being an employee of Hindustan Motors wherein her husband died on 9.1.1992 and after the death of her husband she intended to move to New Jersey, America wherein her daughter Raj Sri married to Anil Kumar Singh as at the said point of time she has been staying there, and after the death of his father she came to stay with her sister Shail Kumari Singh, at Ghaziabad from where she completed formalities for getting visa of America and in between her health deteriorated and ultimately Smt. Dev Kumari Singh has been admitted to Kasturi Devi Nursing Home, Suryanagar Ghaizabad wherein she died on 5.9.1994. It has been precisely mentioned that there was no reason for her to execute any Will deed whatsoever in favour Bhudoo @ Ramesh Singh. It has also been mentioned by the first informant that when he came to Varanasi in order to get his name mutated in place of Smt. Dev Kumari Singh in Nagar Nigam records then he acquired knowledge of the aforesaid fictitious and forged will deed dated 8.10.1993 wherein Bhudoo @ Ramesh Singh has proceeded to describe himself as family member of Smt. Dev Kumari Singh and then it was reflected that based on said Will deed Budhoo @ Ramesh Singh had got his name mutated. He acquired further knowledge that there has been registered power of attorney in favour of Dinesh Mishra S/o Hori Lal executed by Budhoo @ Ramesh Singh on 30.10.2000 and based this fictitious power of attorney the property belonging to first informant has

been transferred to Smt. Uma Rai W/o Ram Nagina Rai on 23.8.2004 and said Smt. Uma Rai has tried to get her name mutated in the said record. It has also been stated in the FIR that informant has also confronted Bhudoo @ Ramesh Singh with the said situation and at the said point of time he has stated that his name has been utilised and he has proceeded to mention that at no point of time there has been any Will deed in his favour and entire activity is of Dinesh Mishra and for personal benefit he has manipulated registered power of attorney on 30.10.2000 and he has also informed that said power of attorney is fictitious and has never been executed. Bhudoo @ Ramesh Singh has also proceeded to give letter to Nagar Nigam mentioning therein that entire activity is fraudulent one and creation of Dinesh Mishra.

11. Once such is the factual situation that has been mentioned in the FIR then to say that merely because civil suit is pending, FIR ought not to have been lodged, cannot be accepted in the facts of the case. Facts of the case clearly reflect that there is precise allegation that in well calculated manner documents have been forged and fabricated to grab the property in question and accordingly the case in hand is not at all falling within the category of cases wherein it could be said that no case is made out or the proceedings are actuated with malice or dispute of purely civil nature has been given cloak of criminal offence whereas contrarily fact of the matter clearly reflects and shows on prima facie basis, as to how documents have been fabricated and in designed manner attempt has been made to grab the property in question by all means fair and foul. The FIR in question does disclose cognizable offence, warranting investigation by police.

12. Once full fledged mechanism has been provided for bringing guilty persons to book then merely because the incumbent has proceeded to institute civil suit for getting his rights cleared over the said property in question and the ground that has been taken in the suit has criminality angle also and in the said direction if FIR has been lodged, then request for quashing of FIR cannot be accepted merely on the ground that civil suit has been filed as there is no bar in lodging of FIR. In appropriate cases there may be exception to this rule i.e. when purely civil matter is given cloak of criminal offence and same is used as a tool of oppression to settle civil dispute, and where the proceedings are actuated with malice and continuance of same would be an abuse of process of law then this Court in exercise of its authority under Article 226 of the Constitution of India can interfere. Facts of the present case is not at all falling in the exceptional clause, rather criminality is writ large, and once request for quashing of FIR is made, then each and every case with its peculiar characteristic has to be examined, and only then relief can be accorded/refused per the facts of case and as far as the case in hand has been examined and it cannot be said that offence is not disclosed. In view of this in the facts of the present case this Court would not at all exercise its inherent jurisdiction to quash the FIR in question.

13. This Court, at this juncture also takes note of the judgment of Apex Court in the case of [R. Kalyani Vs. Janak C. Mehta and Others,](#) wherein parameter of exercise of inherent jurisdiction, has been laid down as follows:

"(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.

(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.

(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.

(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 is worth noting that it was observed therein that one of the paramount duties of the superior Court is to see that person who is absolutely innocent is not subjected to prosecution and humiliation on the basis of a false and wholly untenable complaint.

14. As already discussed above in detail and perusal of the FIR leaves no room for us to doubt that FIR does not disclose cognizable offence in the facts of the case rather it clearly leads to the fact, that in designed manner with the intention of cheat from the very beginning the documents have been fabricated with impunity and property in question has been sought to be grabbed.

15. Consequently there is no occasion for this Court to accord any relief to petitioners and we make it clear that investigation should be carried out in free, fair and impartial manner with all expedition and any of the observation made while deciding the writ petition in question in one way or other same would be limited to the request made by the petitioners for quashing of the FIR. Consequently, present writ petition is dismissed with the aforesaid observations.