

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1402 OF 2014

Smt. Shaheda Sultana w/o.
Abdul Mannan and others

....Petitioners.

Versus

The State of Maharashtra
and another

....Respondents.

Mr. N.V. Gaware, Advocate for petitioners.

Mrs. R.K. Ladda, APP for State/respondent No. 1.

Mr. Vijay Sharma, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE &
SMT. I.K. JAIN, JJ.**

DATED : 18th April, 2015.

ORDER :

1. The petition is filed for relief of quashing of F.I.R. bearing Crime No. 63/2014 registered at Itwara Police Station, District Nanded for the offences punishable under sections 420, 467, 468, 471 r/w. 34 of Indian Penal Code. Both the sides are heard. The learned APP submitted that the investigation is still going on. The papers taken over during investigation like the original sale deed, Hiba document and one more document came to be shown.

2. Respondent No. 2 - Bismillabi had filed application

bearing bearing OMCA No. 187/2014 in the Court of Judicial Magistrate, First Class, Nanded against the present petitioners. In the said proceeding order to make investigation under section 156 (3) of Cr.P.C. is made by the learned J.M.F.C. One Abdul Latif was the father of the complainant. He was living in a house from Sidhanathpuri where complainant was also living till his death i.e. till 10.6.1990. This house is given CTS No. 13979, admeasuring 634 Sq. Mtrs. and the complainant was living in this house with the permission of the deceased. It is her case that in addition to this property, the deceased was having the properties like CTS No. 1259 from Nanded, agricultural land bearing Gat No. 90, admeasuring 3 Hecter 21 R. situated at Kahala, Tahsil Naigaon, agricultural land bearing Gat No. 250, admeasuring 1 Hecter 78 R. situated at village Kahala, Tahsil Naigaon and CTS No. 16937 having area 2100 Sq. Fts. situated at Shaha Coloney, Osmanpura, Aurangabad. It is her case that these properties were owned by deceased Abdul Latif, but he had not partitioned the properties amongst his sons and daughter.

3. Accused No. 1 - Abdul Mannan is a real brother of complainant. One Abdul Sami was also brother of complainant, but he was dead on the date of complaint. Present petitioner No.

1 is the widow of Abdul Mannan and petitioner Nos. 2 to 4 are the issues of petitioner No. 1 from Abdul Mannan. Petitioners Nos. 8 to 15 are the successors of Abdul Sami. Petitioner Nos. 5 to 7 are said to be persons, who are involved in the illegal activities of other petitioners and there is allegation that they have signed the forged documents as witnesses.

4. It is the case of complainant that Abdul Mannan created false document of gift, Hiba in respect of house property No. 21-8-39 (CTS No. 16937) situated at Osmanpura, Aurangabad to show that Abdul Latif had given the property by way of gift to present petitioner Nos. 1 to 4. It is contended that present petitioner Nos. 6 and 7 have signed on this document as witnesses. It is her case that then civil suit was filed to create more false record which was bearing R.C.S. No. 525/1990 and within 8 to 10 days, one person was produced in the Court to show that he was Abdul Latif and false documents of consent terms were prepared and on that basis, the decree of declaration was obtained by petitioner Nos. 1 to 4 in their favour. It is contended that by doing such illegal act, they are trying to grab this property when complainant has share in the property.

5. It is the case of complainant that false proceeding

was filed behind her back in city survey office to show that complainant had given her consent for partition of the property and she was given area of 47.37 Sq. Mtrs. in CTS No. 13979 situated at Nanded. It is her case that an attempt was made to show that entire remaining portion was given to the remaining successors of Abdul Latif. It is her case that no notice was issued to her in respect of this proceeding. It is her case that when she learnt about making of such entries in the city survey record, she applied to the office for getting copies, but it was informed to her that the entire file in respect of this entry is missing. It is her case that by creating false record, attempt is made by accused to deprive her of her share from this property.

6. It is the case of complainant that similar modus operandi was used by the accused to grab lands bearing Gat Nos. 90 and 250 and false affidavit purportedly made by the parties was used and the properties standing in the name of Abdul Latif were mutated in the names of Abdul Mannan and Abdul Sami. It is contended that the circumstance that within five days of the death of Abdul Latif such proceeding was started and entries were made, are sufficient to show that everything was done behind her back and only to grab the properties. It is her case that when she applied for getting copies of the relevant

record, it was informed that the file in respect of said entries is missing.

7. It is the case of complainant that the accused have committed the offence of forgery, cheating etc. and they had even produced one person in the Court to show that he was Abdul Latif when he was not Abdul Latif and such record was created in favour of accused by using the Court order.

8. It is not disputed that Abdul Latif was owner of aforesaid properties. The so called gift deed is taken over by police during investigation and sale deed which was executed in favour of Abdul Latif in respect of the property shown in the gift deed is also seized by the police. Some record in respect of the entries made in city survey office and the entries made in the revenue record of agricultural land is also produced. This record shows that no share is shown to be given to the complainant in the property, left behind by her father. There are circumstances to show that within 10-15 days of the date of suit, written statement was filed and consent decree was obtained by using so called gift deed. If Abdul Latif had really created such document, there was no need of creating such dispute by him. When the gift deed is shown to be made in the year 1982, the

record of suit was created in the year 1990. Parties are Muslims and so, the contention that the property was partitioned and given only to two sons is not acceptable. Further, the relevant record is not available with revenue authority and also city survey office. As it was absolute property of Abdul Latif, there was no question of giving report by him to partition the property amongst his sons viz. Abdul Sami and Abdul Mannan (Gat No. 90). The mutation entry in respect of property bearing Gat No. 250 also shows that no reference was given of the other heir of Abdul Latif like the complainant and these two brothers got entered their names.

9. The learned counsel for petitioners submitted that the successors of Abdul Mannan or even the successors of Abdul Sami cannot be held liable for the offences as record was created probably by Abdul Mannan and Abdul Sami. This submission is not acceptable. The suit was filed in the year 1990 by successors of Abdul Mannan, who are the petitioners and they have used the so called Hiba, document of gift. When there is allegation that the gift document is fabricated document, the circumstance that it is shown to be created in the year 1982, cannot be considered. The date on which the petitioners used this document is relevant for the present purpose.

10. The learned counsel for petitioners submitted that the suit is filed by complainant for relief of partition of all the aforesaid properties and so, civil Court can decide the grievance of the complainant. In support of this contention, the learned counsel placed reliance on a case reported as **AIR 2009 SC 2380 [Hira Lal & Ors. Vs. State of U.P. & Ors.]**. The facts and circumstances of each and every case are always different. The same set of facts can give rise to civil dispute and also for criminal action. The facts and circumstances of the present case show that there is material to make out prima facie case of forgery. In such a case, thorough investigation is required. It also needs to be kept in mind that Abdul Latif died within few days of the compromise decree (he died on 10.6.1990). On the same point, reliance was placed on two more reported cases like **AIR 2008 SC 247 [All Cargo Movers (I) Pvt. Ltd. & Ors. Vs. Dhanesh Badarmal Jain & Anr.]** and **2013 (11) SCC 673 [Paramjeet Batra Vs. State of Uttarkhand & Ors.]**. The facts of these reported cases were also different. In view of the aforesaid circumstances, this Court holds that it is not possible to quash the F.I.R. Thorough investigation is necessary and police also wants to do it. The relevant record like the contemporary signatures of Abdul Latif need to be collected and

it need to be sent to Hand Writing Expert for comparison with disputed signatures on aforesaid record.

11. In the result, the petition stands dismissed.

12. The learned counsel for petitioners requested for granting stay of four weeks. The said request is refused.

[SMT. I.K. JAIN, J.]

[T.V. NALAWADE, J.]

ssc/