

SSK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO. 414 OF 2015**

- |                                                 |   |                 |
|-------------------------------------------------|---|-----------------|
| 1. Jehangir Maneck Engineer,                    | ) |                 |
| Age 66, Occupation -Consultant                  | ) |                 |
| with Tata Services Ltd.,                        | ) |                 |
| Mani Mount, Altamount Road,                     | ) |                 |
| Mumbai – 400 026.                               | ) |                 |
| 2. Sakar Manech Engineer,                       | ) |                 |
| Age -62, Occupation – Housewife                 | ) |                 |
| Mani Mount, Altamount Road,                     | ) |                 |
| Mumbai – 400 026.                               | ) |                 |
| 3. Minnie Soli Colabawalla                      | ) |                 |
| Age-81, Occupation – Housewife,                 | ) |                 |
| Adie Mansion, M. Shaukatali Road,               | ) |                 |
| Mumbai – 400 007.                               | ) | ....Petitioners |
| versus                                          |   |                 |
| 1. The State of Maharashtra                     | ) |                 |
| (At the instance of the Gamdevi Police Station) | ) |                 |
| 2. Temple Terrace Premises Pvt. Ltd.,           | ) |                 |
| a Company incorporated under the                | ) |                 |
| Companies Act, 1956, Temple Terrace,            | ) |                 |
| Forjett Street, Mumbai – 400 036.               | ) | ....Respondents |

Mr. D. J. Khambatta, senior counsel with Mr. Sanjog Parab i/b. Parab and Associates, advocates for the petitioners.

Mrs. M. M. Deshmukh, APP for the State.

Mr. V. A. Thorat, senior counsel along with Mr. Subodh Desai i/b. Mr. Hrishikesh Chavan, advocate for respondent No.2.

**CORAM : RANJIT MORE &  
ANUJA PRABHUDESSAI, JJ.**

**DATED : 23<sup>rd</sup> JUNE, 2015.**

**JUDGMENT (Per Ranjit More, J.) :**

Heard Mr. Khambatta, learned senior counsel for the petitioners, Mr. Thorat, learned senior counsel for respondent No.2 and Mrs. M. M. Deshmukh, learned APP for the State.

2. Rule. By consent, Rule is made returnable forthwith and the matter is heard finally as the controversy involved therein is in narrow compass.

3. The petitioners have approached this Court invoking the jurisdiction conferred upon this Court under Article 226 of the Constitution of India read with provisions of Section 482 of the Code of Criminal Procedure, 1973, for quashing and setting-aside the FIR No.224 of 2014 registered with Gamdevi Police Station, at the instance of respondent No.2 for the offences punishable under Sections 465, 467, 468, 471, 474, 420, 120B, 511 read with 34 of the Indian Penal Code, 1860.

4. The petitioners claim to be the heirs and legal representatives of one Mehru M. Kanga. The said Mehru M. Kanga use to reside in flat No.2, Ground Floor, Temple Terrace, Forjett Street, Mumbai – 400 036 (hereinafter referred to as “the said flat premises”) until her death on 7<sup>th</sup> September, 2014. There is also no dispute that M. P. Kanga and J.P.Kanga i.e.husband and brother-in-law of Mehru M. Kanga were the original tenants of the said flat premises. The original tenants Mr. M. P. Kanga and Mr. J. P. Kanga expired in the year 1994, and after their demise, Mehru M. Kanga continued living alone in the said flat until her death. Further, it is not in dispute that Mehru M. Kanga was paying the rent of the said flat and the rent receipts were initially issued by Binani

Properties Pvt.Ltd. and later by respondent No.2 viz. Temple Terrace Premises Pvt. Ltd..

5. The petitioners claim that Mehru M. Kanga left behind her last Will dated 14<sup>th</sup> October, 2009, leaving her estate equally to her sister-in-law – Mrs. Meher Maneck Engineer (mother of petitioner Nos. 1 and 2) and Mrs. Minnie Soli Colabawalla (petitioner No.3). This Will, however, does not refer to the tenancy rights as tenancy rights cannot be bequeathed by a Will. The petitioners claim that after the demise of M. P. Kanga and J. P. Kanga in the year 1994, the tenancy of the said flat premises devolved upon Mehru M. Kanga, and after her death in the year 2014, the tenancy rights in respect of the said flat devolved upon the petitioners as her legal heirs under Section 7 (15)(d) of the Maharashtra Rent Control Act, 1999.

6. It is further case of the petitioners that between 9<sup>th</sup> September, 2014 and 11<sup>th</sup> September, 2014, when petitioner No.1 along with his wife went to the said flat, they found a padlock on the outer door, together with a notice pasted on the door to the effect that the premises were owned by respondent No.2 and the same are under their control and that all persons are required to take the permission of respondent No.2 to enter the premises and that trespassers would be prosecuted and handed over to the police. The representative of respondent No.2 opened the padlock

and petitioner No.1 and his wife entered the premises and the door was padlocked again when they came out. On 12<sup>th</sup> September, 2014, when petitioner No.1 and his wife went to the said flat, they were flatly told that they could not enter as the key to the padlock was taken by the head office of respondent No.2-landlords.

7. On 15<sup>th</sup> September, 2014, the petitioners wrote a letter to respondent No.2 stating inter-alia (i) that Mehru M. Kanga expired on 7<sup>th</sup> September, 2014; (ii) that the rent receipt of the flat stands in the names of M.P.Kanga and J.P.Kanga and both of them expired in the year 1994. Mrs. Mehru M. Kanga, the widow of M.P.Kanga, continued to stay in the said flat until her death. The rent receipt continued to be issued in the names of M.P.Kanga and J.P.Kanga, although the rent was regularly paid by Mrs. Mehru Kanga and was accepted by the landlords. (iii) that, in law, the petitioners as legal heirs, were entitled to the tenancy of the said flat; (iv) and called upon respondent No.2 to remove the padlock.

8. The respondent No.2 neither replied to the notice nor removed the padlock. Hence, the petitioners filed written complaint dated 19<sup>th</sup> September, 2014 in Gamdevi Police Station against respondent No.2 for wrongful restraint under Section 341 of the Indian Penal Code, 1860. The petitioners annexed following documents to the complaint :

- i) Some rent receipts issued by Binani Properties

Pvt. Ltd. - all in the names of Mr. M. P. Kanga and Mr. J. P.Kanga-Annexure "A";

ii) One rent bill and two rent receipts issued by respondent No.2-Temple Terrace Premises Pvt. Ltd.-as Annexure "B";

iii) The Will dated 14<sup>th</sup> October, 2009 (in order to show that the articles locked inside the flat belonged to the beneficiaries under the Will);

iv) Extract from the Indian Succession Act (to show that the petitioners were the legal heirs of Mehru M. Kanga);

v) Extract from the Maharashtra Rent Control Act, 1999 (to show that as legal heirs, the petitioners were entitled to the tenancy).

9. Respondent No.2, thereafter, gave reply to the petitioner by its letter dated 19<sup>th</sup> September, 2014, a copy of which is annexed at page 76 of the petition. Respondent No.2 claimed that Mrs. Mehru M. Kanga was never a direct tenant. Respondent No.2, however, did not deny that the rent was paid by Mrs. Mehru M. Kanga. Respondent No.2 asserted that no tenancy rights devolved upon the petitioners. Respondent No.2 wrote another letter dated 29<sup>th</sup> October, 2014, a copy of which is annexed at page 83 of the said petition, stating that it did not admit that the petitioners are the legal heirs of Mrs. Mehru M. Kanga. Respondent No.2 also feigned ignorance about the Will of late Mehru M. Kanga. Respondent No.2, however, stated that the tenancy rights cannot be bequeathed by Will.

10. On 6<sup>th</sup> November, 2014, one Mr. Mahesh Thakur, on behalf of respondent No.2, filed a complaint in Gamdevi Police Station against the petitioners, which was registered as C.R.No.224 of 2014 for the offences punishable under Sections 465, 467, 468, 471, 420 read with Sections 120B, 511 and 34 of the Indian Penal Code, 1860. In this complaint, respondent No.2 alleged that the two documents annexed by the petitioners to their complaint dated 19<sup>th</sup> September, 2014, have been forged i.e. the signature on the Will dated 14<sup>th</sup> October, 2009 of late Mrs. Mehru M. Kanga has been forged because it was allegedly not consistent with her alleged signature on two old cheques issued towards rent, copies of which respondent No.2 has annexed to its complaint. Respondent No.2 has also alleged that the rent receipt No.27 dated 3<sup>rd</sup> January, 2014 issued by it, has been forged by the petitioners by adding “s” to “Mr.” changing the name of “Mr. M. P. Kanga” to “Mrs. M. P.Kanga”. Respondent No.2 has annexed a photocopy of the alleged carbon copy of the impugned receipt to show that the original was allegedly in the names of Mr. M. P. Kanga and Mr. J. P. Kanga.

11. By this petition, the petitioners are seeking quashment of this complaint.

12. Mr. Khambatta, learned senior counsel, submitted that admittedly Mr. M. P. Kanga and Mr. J. P. Kanga were the tenants of the

said flat premises and they both expired in the year 1994, and thereafter, Mrs. Mehru M. Kanga continued to stay in the said flat premises until her death on 7<sup>th</sup> September, 2014, and she continued to pay the rent. However, the rent receipts were issued in the names of Mr.M.P. Kanga and Mr. J.P.Kanga. He submitted that Mrs. Mehru M. Kanga became the tenant after the death of her husband and brother-in-law, and on her demise, the petitioners being legal heirs and representatives are entitled to the tenancy in respect of the said flat premises. Respondent No.2, however, prohibited the petitioners from entering the said flat premises by putting padlock, and therefore, the petitioners were constrained to file the complaint on 19<sup>th</sup> September, 2014, and as a counterblast to this complaint, respondent No.2 filed the subject FIR. He submitted that the petitioners are not claiming tenancy rights under the Will and respondent No.2 is also aware about this position. Regarding allegation of forgery of the rent receipt is concerned, he submitted that the rent receipts were given to petitioner No.1 by late Mehru M. Kanga along with other papers in or about April 2014 and the petitioners were not aware about the mistake in the said receipt. He submitted that petitioners have not committed any forgery by adding "s" to "Mr." , and in any case, the alleged forged receipt as well as Will does not give any benefit to the petitioners. He lastly submitted that the present case is covered under the guidelines laid down by the Apex Court in the case of **State of Haryana versus Bajan Lal 1992 Supp (1) SCC 335**. To support his

contentions, he relied upon a decision of the Apex Court in **Parminder Kaur versus State of Uttar Pradesh and anr. (2010) 1 SCC 322.**

13. Mr. Thorat, learned senior counsel for respondent No.2, vehemently contested the petition. He submitted that, the FIR in question, filed against the petitioners on behalf of respondent No.2 prima – facie discloses commission of cognizable offence. He submitted that the question as to what advantage the petitioners could have got by forging the Will dated 14<sup>th</sup> October, 2009 or the impugned receipt, cannot be gone into at this stage. He further submitted that the investigation into the said FIR is in progress and petitioners are already protected by grant of anticipatory bail in their favour. He lastly submitted that ultimately the investigating agency is always at liberty to file summary report under Section 169 of the Code of Criminal Procedure, 1973 if satisfied and, therefore, at this preliminary stage, the FIR cannot be quashed and the petition deserves to be dismissed as devoid of any substance.

14. We have considered the rival submissions and have gone through the compilation of the petition along with copy of the FIR and the decisions cited at Bar. The petitioners are alleged to have committed offences punishable under Sections 465, 467, 468, 471, 474, 420, 120-B, 511 read with 34 of the Indian Penal Code, 1860. The essential ingredient

of Sections 465, 467, 468, 471, 474 of the Indian Penal Code, 1860 is forgery which under Section 463 of the Indian Penal Code, 1860 is defined as under:

*463. "Forgery.--Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery".*

15. In order to attract the provisions of forgery, it must be shown that false document or false electronic record is made with intention (1) to cause damage or injury to the public or any person; or 2) to support any claim or title; or 3) to cause any person to part with property or 4) to cause any person to enter into any express or implied contract or 5) to commit fraud or that fraud may be committed.

16. In the instant case, the allegations leveled against the petitioners are twofold :

1) The petitioners have forged the signature of late Mrs. Mehru M. Kanga on the Will dated 14<sup>th</sup> October, 2009 and:

2) The petitioners have forged the Rent Receipt No.27 dated 3<sup>rd</sup> January, 2014 issued by respondent No.2 by

adding letter “s” to “Mr.” thereby altering the name from Mr. M.P.Kanga to Mrs. M.P. Kanga.

17. It is not in dispute that Mr. M. P. Kanga and Mr. J. P. Kanga were the original tenants of the premises. After the death of the original tenants, Mrs. Mehru M. Kanga continued to reside in the premises. The said Mehru M. Kanga expired on 7<sup>th</sup> September, 2014, leaving behind the petitioners herein as the legal heirs. The said Mehru M. Kanga had executed a Will bequeathing all her movable and immovable properties equally to her sister-in-law – Mrs. Meher Maneck Engineer, the mother of the petitioner No. 1 and 2 and to her niece, Mrs. Minnie Soli Colabawalla, the petitioner No.3 hereinabove. It is to be noted that the petitioners have not claimed tenancy rights to the premises under the said Will but as disclosed in their letter dated 15<sup>th</sup> September, 2014, addressed to respondent No.2 as well as in their complaint dated 19<sup>th</sup> September, 2014 the petitioners have claimed tenancy rights under the provisions of Maharashtra Rent Control Act, 1999. Even otherwise, under the law, tenancy rights cannot be bequeathed by a Will and respondent No.2 was well aware of this fact. The said Will, therefore, could not be used to support the claim of tenancy or to fraudulently or dishonestly induce respondent No.2 to deliver the tenanted premises or any other property. The said Will does not cause any injury or damage to respondent No.2 so as to constitute an offence of forgery.

18. As regards the allegations of forgery of the rent receipt as stated earlier, it is not in dispute that Mr. M. P. Kanga and Mr. J. P. Kanga were the tenants of the premises and upon their death Mrs. Mehru M. Kanga, the widow of Mr. M. P. Kanga continued to be in possession of the premises. It is also not in dispute that though Mrs. Mehru M. Kanga continued paying the rent in respect of the tenanted premises, the rent receipts were issued in the names of Mr. M. P. Kanga and Mr. J. P. Kanga.

19. Respondent No.2 has alleged that the petitioners have forged the rent receipt No.27 dated 3.1.2014 by adding the letter “s’ to “Mr.”, thus altering the name from Mr. M. P. Kanga to Mrs. M. P. Kanga. In order to substantiate this contention, respondent No.2 had handed over to the police a photocopy of the carbon copy of receipt No.27. The said photocopy was produced before us for our perusal. A bare comparison of the said photocopy and the receipt which was alleged to be forged reveals that the handwriting on the photocopy is visibly different from the handwriting on the alleged forged receipt. It is thus evident, that the photocopy of the receipt produced by respondent No.2 is in fact not a photocopy or carbon copy or duplicate of receipt No.27. Consequently, the said photocopy cannot form the basis for arriving at a conclusion that the original receipt No.27 was issued in the

name of Mr. M. P. Kanga and that the petitioners had changed the same to Mrs. M. P. Kanga.

20. It is also pertinent to note that the petitioners had produced rent receipts for the period prior to as well as subsequent to 3.1.2014. All the receipts, except the solitary receipt No.27 dated 3.1.2014, are in the names of Mr.M.P.Kanga and Mr.J.P.Kanga. It is rather astounding that the petitioners would forge only one receipt to claim tenancy rights.

21. Furthermore, it is evident that the petitioners have not claimed that Mrs. Mehru M. Kanga was the original tenant or that the rent receipts have been transferred in the name of Mrs. Mehru M. Kanga or Mrs. M. P. Kanga. On the contrary, in the complaint dated 19<sup>th</sup> September, 2014, the petitioners specifically stated that :

*“Sometime later, the said Mehru Kanga was asked to issue the cheques for the payment of rent in the name of Temple Terrace Premises Pvt. Ltd., Forjet Street, Mumbai 400 036. The rent receipts continued to be issued in the names of M.P.Kanga and J.P.Kanga. Hereto annexed and colly. marked as “Annexure B” are one bill and two rent receipts issued by Temple Terrace Premises Pvt. Ltd..”*

22. It is thus clear that the petitioners had specifically stated that the rent receipts continued to be issued in the names of Mr. M. P. Kanga and Mr. J. P. Kanga. Even in the letters addressed to respondent No.2,

the petitioners had maintained that although the rent was paid by Mrs. Mehru M. Kanga, the rent receipts were issued in the names of Mr. M. P. Kanga and Mr. J. P. Kanga. Had there been any intention on the part of the petitioners to misuse the receipt No.27 dated 3.1.2014, the petitioners would not have annexed the other receipts which were in the names of Mr. M. P. Kanga and Mr. J. P. Kanga.

23. It is also to be noted that it is not in dispute that the rent was paid by Mrs. Mehru M. Kanga. The petitioners had nowhere claimed that the rent receipts had been transferred in the name of Mrs. Mehru M. Kanga. The petitioners have also not based their tenancy claim on the said receipt No.27 but have claimed tenancy rights as the legal heirs of Late Mrs. Mehru M. Kanga. The petitioners therefore did not stand to gain any advantage by altering the name from Mr. M. P. Kanga to Mrs. M. P. Kanga and as such there was no question of forging one isolated receipt by changing the name from Mr. M. P. Kanga to Mrs. M. P. Kanga. The said change even otherwise is innocuous and would not constitute offence of forgery.

24. We are also totally at loss to understand as to how the allegations leveled against the petitioners constitute an offence under Section 420, the essential ingredients of which are : 1) deception of any person; 2 (a) fraudulently or dishonestly inducing that person to i) deliver

any property to any person, ii) to consent that any person shall retain any property and b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. In the instant case, the allegations leveled against the petitioners do not satisfy these essential ingredients.

25. Hence, in our considered view, the allegations made in the FIR, even if are taken at its face value, do not constitute any offence. We have no doubt in our mind that the said criminal proceedings have been instituted maliciously with an intention of compelling the petitioners into surrendering the premises in respect of which they are claiming tenancy rights as legal heirs of Late Mrs. Mehru M. Kanga. The present case is, therefore, well governed by the guidelines 1 and 7 laid down by the Apex Court in State of **Haryana versus Bhajanlal (supra)**.

26. We are, therefore, of the view that continuation of the prosecution against the petitioners would amount to nothing but abuse of the process of law. We are, therefore, inclined to allow the petition. Rule is, accordingly, made absolute in terms of prayer clause (a) and the writ petition stands disposed of.

**(ANUJA PRABHUDESSAI, J.)**

**(RANJIT MORE, J.)**