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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.572 OF 2014

1. Kiran Ambalal Choksi
2. Jaimin Kiran Choksi
3. Smt. Veena Bhupendra Choksi
4. Kunjan Bhupendra Choksi
5. Punit Bhupendra Choksi ….Applicants

versus

1. State of Maharashtra
2. Smt. Usha Jagdish Panchal ….Respondents

Mr. R. A. Shaikh, advocate for the applicants.
Mr. J. P. Yagnik, APP for the State.
Mr. Vijay V. Nene, advocate for respondent No.2.

CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.

DATED : 20th MARCH, 2015.

P.C.:

Heard learned counsel and learned APP appearing for the respective parties.

2. By this application under Section 482 of the Code of Criminal Procedure, 1973 (in short "the Cr.P.C."), the applicants/original accused are seeking quashment of the proceedings of C.C.No.28/SW/2012 pending on the file of Additional Chief Metropolitan Magistrate, 40th Court, Girgaon, Mumbai. Respondent No.2/original complainant is the real sister of applicant No.1. Applicant Nos. 2, 4 and 5 are nephews and applicant No.3 is the sister-in-law (i.e. widow of respondent No.2's real brother-

Bhupendra). The father of applicant No.1 and respondent No.2 died on 2nd January, 1981.

3. Respondent No.2 filed the above referred criminal case against the applicants alleging that after the demise of her father, the applicant No.1 and deceased brother Bhupendra informed her that the father had left a will, however, they did not show the copy of the will to her. She, however, alleged that without giving any notice to her, the applicant No.1 and deceased brother Bhupendra dishonestly obtained probate of the said will and fraudulently disposed of several immovable and movable properties belonging to her deceased father and misappropriated the funds for their own use without giving any share to her. She also made an allegation that during the lifetime of her father, a bank account was opened in the joint names of her deceased father and herself, and the deceased father used to deposit money regularly in the said account. This account was to be operated by either of the survivors. She alleged that, at the time of the death of her father, there was an amount of Rs.1,25,000/- in the said account. She further alleged that after the demise of her father, initially deceased brother-Bhupendra and thereafter applicant No.1 promised to deposit an amount regularly and in the year 2011, she was informed that approximately an amount of Rs.5,00,000/- is accumulated in the said account. It was further alleged that applicant No.1 took her signatures on income tax challan forms. Respondent No.2

further alleged that after the demise of her mother, she had called upon the applicants to give a copy of the mother's will. However, the applicants refused to give the same.

4. Mr. Shaikh, learned counsel for the applicants submitted that the complaint is as vague as possible. He further submitted that by executing relinquishment deed in the year 1989, respondent No.2 as well as another sister-Daksha relinquished their share in the property of the deceased father. He further submitted that the respondent No.2 filed civil suit being suit No.1473 of 2012 making similar allegations. In this suit, respondent No.2 claimed interim injunction. However, the same was rejected on 28th May, 2012, and thereafter, the present complaint is filed in abuse of the process of law. Learned counsel for respondent No.2, on the contrary, submitted that the complaint discloses the commission of cognizable offence and, therefore, the process was rightly issued. He submitted that the signatures on the relinquishment deed are forged one. He lastly submitted that no interference is called out in exercise of jurisdiction under Section 482 of the Cr.P.C. and prayed for dismissal of the petition.

5. Having considered the rival submissions and having gone through the criminal application along with the annexures thereto, we find merit in the application. Learned Magistrate, in pursuance of the

statement of complainant No.2, recorded under Section 200 of Cr.P.C. has issued process for offences punishable under Section 404 read with Section 34 of the Indian Penal Code, 1860. Section 404 deals with dishonest misappropriation of property possessed by deceased person at the time of his death. The offence under Section 404 is punishable with imprisonment of either description for a term which may extend to three years and shall also be liable to fine. The order is very cryptic and does not show any application of mind. We have perused the verification statement of respondent No.2-complainant. In the said statement, respondent No.2 stated that her deceased father left a will, and despite repeated requests, deceased brother-Bhupendra or the present applicant No.1 has not given a copy of the same to her. Stray allegations are also made that applicant No.1 and deceased brother- Bhupendra dishonestly and fraudulently disposed of several immovable and movable properties of her late father and misappropriated huge amount. So far as the bank account referred in the complaint is concerned, she has stated that around 2011 nearly an amount of Rs. 5,00,000/-was accumulated. However, there are no allegations that either applicant No.1 or deceased brother -Bhupendra has withdrawn the said amount.

6. The father of respondent No.2 expired in the year 1981. Respondent No.2 filed the complaint for the first time in the year 2012. Obviously, the complaint is filed beyond the period of limitation stipulated

under Section 468 of the Cr.P.C.. The complaint is, therefore, not maintainable. That apart, we have perused the complaint as well as the verification statement. The dispute between the parties seem to be of civil nature. Relinquishment deed is the subject matter of the civil suit. The main grievance of the respondent No.2 is about non-supply of the copy of the will of her deceased father and mother. The verification statement does not disclose ingredients of any offence under Section 404 of the Cr.P.C. In the said circumstances, we have no alternative but to quash the complaint and the same is, accordingly quashed and set-aside. The criminal application is allowed in terms of prayer clause (a) and is disposed of as such.

(ANUJA PRABHUDESSAI, J.) **(RANJIT MORE, J.)**