

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.08.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP Nos.487 of 2013, 30341 of 2013,
17278 of 2015 and 17885 of 2015
and M.P.Nos.1 and 1 of 2013 in Crl.OP.Nos.487 and 30341 of 2013
and M.P.Nos.1 and 1 of 2015 in Crl.OP.Nos.17278 and 17885 of 2015
and M.P.No.2 of 2013 in Crl.O.P.No.487 of 2013

Arshiya Afsha Petitioner in Crl.OP.487 of 2013
Ethashamul Haq Petitioner in Crl.OP.30341 of 2013
Hazeena Begum Petitioner in Crl.OP.17278 of 2015
Syed Natiff Nawaz Petitioner in Crl.OP.17885 of 2015

Vs.

Syed Masood Ali Respondent in all Crl.OPs.

Prayer:- Criminal Original Petitions filed under Section 482 Cr.P.C., to call for the records in C.C.No.489 of 2012 pending on the file of XIII Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioners : Mr.V.Johnson Yuvaraj
in Crl.OP No.487/13
Mr.G.Krishna Kumar
in Crl.OP No.30341/13
Mr.S.Ashok Kumar
in Crl.OP Nos.17278 & 17885/15

For Respondent : Mr.V.V.Sairam
in all OPs

C O M M O N O R D E R

These petitions have been filed to quash the prosecution in C.C.No.489 of 2012. The facts of the case has a chequered history. One Syed Yacoob Ali was married to Haseena Begum [A1] and through the wedlock, he has two children, Syed Natif Nawaz [A2] and Arshia Afsha [A3]. It appears that the said Syed Yacoob Ali married one Zaibunnissa Begum as second wife and through her he has two sons, one of whom is Syed Masood Ali [complainant]. Syed Yacoob Ali was a Government employee. He died on 11.01.2003. After his death, Haseena Begum [A1] appears to have submitted an application some time in the year 2003 to the jurisdictional Tahsildar for issuance of legal heirship certificate. In that application, she has shown only her name and the name of her children as legal heirs of Syed Yacoob Ali. The Tahsildar after conducting enquiry had issued a legal heirship certificate on 23.01.2003 including the names of Haseena Begum [A1], Syed Natif Nawaz [A2] and Arshia Afsha [A3] as the only legal heirs of deceased Syed Yacoob Ali. Thereafter, Haseena Begum was granted family pension by the authorities under the Family Pension Rules. On coming to know that Haseena Begum is receiving the Family Pension to the exclusion of Zaibunnissa Begum, steps were taken by the latter to cancel the legal heirship certificate. The District Collector conducted enquiry and cancelled the legal heirship certificate dated 23.01.2003 issued by the Tahsildar, pursuant to which Zaibunnissa Begum is also sharing the family pension with Haseena Begum now. In the meantime, the children of Zaibunnissa Begum, including the complainant herein, filed O.S.No.6444 of 2003 for partition and the suit was partly allowed. Challenging the judgment and decree, Haseena Begum[A1]/ first wife filed A.S.No.536 of 2006 before this Court. When A.S.No.536 of 2006 was taken for final hearing, it appears that the parties arrived at a settlement and a memo of compromise was entered into on 19.08.2008 which has been extracted in the decretal portion of A.S.No.536 of 2006. It may be pertinent to mention here that in the said Memo of Compromise, Zaibunnissa Begum [second wife], her son Syed Masood Ali [complainant herein], Haseena Begum [A1], Syed Natif Nawaz [A2] and Arshia Afsha [A3] are all signatories to it and it may be relevant to extract the following paragraphs from the said Compromise Memo.

"6. That the fourth respondent herein who is the mother of respondents 1 and 2/plaintiffs 1 and 2 herein has no manner of right, title or interest in the schedule mentioned properties. She has been made a formal party to the above appeal as well as to this memo of compromise with a view to bind her with the terms of this compromise.

7. That the matter has been settled by

mutual consent amicable, none of the parties hereto has or have any claim against the other parties hereto now or in future.

11. That the parties hereto do agree that hereafter there shall be no monetary consideration or connection between the parties hereto except blood relationship."

2. After that, Syed Masood Ali [complainant] lodged the present private complaint against Haseena Begum[A1], Syed Natif Nawaz [A2] and Arshia Afsha [A3] which was taken on file as C.C.No.489 of 2012 by the learned XIII Metropolitan Magistrate, Egmore, Chennai and after receipt of process, Haseena Begum[A1], Syed Natif Nawaz [A2] and Arshia Afsha [A3] have approached this Court under Section 482 Cr.P.C. for quashing the proceedings.

3. This Court carefully perused the private complaint filed by Syed Masood Ali. The sum and substance of the allegations in the complaint is that, the accused had misrepresented to the Tahsildar in the year 2003 and had obtained a legal heirship certificate dated 23.01.2003 excluding Zaibunnissa Begum and her children. The complaint also discloses that the District Collector conducted enquiry and by order dated 29.11.2006, cancelled the legal heirship certificate by giving a finding that Zaibunnissa Begum and her children ought to have been included as legal heirs.

4. The short question that has to be considered in this quash application is, what are the offences that the complaint discloses against the accused herein.

5. Mr.V.V.Sairam, learned counsel for the complainant placed heavy reliance upon the District Collector's order cancelling the legal heirship certificate and submitted that the legal heirship certificate has been obtained by giving false information to the authorities. This Court carefully perused the District Collector's order dated 29.11.2006. The District Collector has conducted enquiry and during the course of enquiry, Haseena Begum has been enquired. Haseena Begum has stated in the enquiry that her husband married Zaibunnissa Begum as second wife, but, after marriage, they were estranged and that her husband had pronounced triple talaq on 29.01.1985 in the presence of the Kazi and had dissolved the marriage. In support of her contention that they were estranged, she also stated in the enquiry that, Zaibunnissa Begum even filed maintenance proceedings against her husband under Section 125 Cr.P.C. during his life time on the ground that he has deserted her. Therefore, she believed that the marriage between her husband and Zaibunnissa Begum was terminated in accordance with Muslim Marriage Laws.

6. Mr.V.V.Sairam, learned counsel further submitted that the District Collector has given a clear finding that the divorce itself is not legal and therefore, the contention of Haseena Begum ought to be rejected.

7. This Court perused the reasons given by the District Collector for arriving at the conclusion that triple talaq is not valid. The District Collector has consulted the Chief Kazi by submitting the document purported to be the record of triple talaq and has obtained opinion that the document is invalid, because, it does not contain the signature of witnesses as required under Islamic Law and further, it was not communicated to the divorcee. It is not the District Collector's finding that Syed Yakoob Ali never pronounced triple talaq divorcing Haseena Begum. It is his finding that the document evidencing triple Talaq is an invalid one. Therefore, the contention of Haseena Begum that, she believed that her husband had legally divorced Zaibunnissa Begum and therefore, she applied for legal heirship certificate excluding her name and the name of the children, cannot be faulted. In any event, legal heirship certificates are not issued on the ipse dixit of the applicant. Law presumes that legal heirship certificates are issued after due enquiry by the Revenue Officials and law also provides for cancellation of such certificates by the District Collector. In any event, legal heirship certificates do not decide relationships and cannot be equated on par with civil Court decrees.

8. That apart, pension is not granted based on legal heirship certificate given by the Tahsildar, but is based on the entries in the Service Register. Assuming for a moment that Haseena Begum had given false information to the Tahsildar by suppressing the names of Zaibunnissa Begum and her children, her act would, at the most, fall within the mischief of Section 177 IPC, for which, the prosecution can be launched only in terms of Section 195 Cr.P.C. by the public servant.

9. Mr.V.V.Sairam, learned counsel, relied upon the judgment of the Supreme Court in Rajesh Bajaj v. State NCT of Delhi and others [(1999) SCC (Cri) 401], wherein it is stated as follows in paragraphs 8 and 9:

"8. It was thereafter that the High Court scanned the complaint and found out that "there is nothing in the complaint to suggest that the accused had dishonest or fraudulent intention at the time of export of goods".

9. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is

alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basis facts which are absolutely necessary for making out the offence. In *State of Haryana v. Bhajan Lal* this Court laid down the premise on which the FIR can be quashed in rare cases. The following observations made in the aforesaid decisions are a sound reminder: (SCC p.379, para 103)

"103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

10. This Court has no quarrel with the proposition of law laid down in the said judgment. In the present complaint, the complainant wants the Court to infer that Zaibunissa Begum had committed an offence under Sections 415 and 420 IPC for having obtained a legal heirship certificate by giving false information. It may be apposite to note that the District Collector has not cancelled the legal heirship certificate on the ground that Zaibunissa Begum had wilfully given false information, but, had cancelled the legal heirship certificate, because, the document evidencing triple talaq is not valid according to the opinion offered by the Kazi. The complaint does not disclose the minimum ingredients of the offence that the accused had a criminal intention at the inception. Even going by the documents relied upon by the complainant, the accused believed that Zaibunissa Begum who

was estranged with Syed Yakoob Ali even when he was alive, was not legally entitled to be included as a legal heir, in view of the triple talaq pronounced by him.

11. Mr.V.V.Sairam, learned counsel submitted that Haseena Begum [A1] should have at least included the children born to Zaibunnissa Begum in the application for legal heirship certificate and therefore, she has necessary mens rea. In the considered opinion of this Court, this argument is indeed far-fetched and preposterous.

In the result, this Court is of the view that the prosecution against the petitioners is nothing short of witch-hunting and is an abuse of process of law and it is accordingly quashed. The Criminal Original Petitions are allowed. Whatever stated above is for the limited purpose of deciding these quash petitions and shall not prejudice the case of the parties in the litigations in other forums.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gms

To

1. XIII Metropolitan Magistrate,
Allikulam,
Chennai - 3.

2. The Public Prosecutor
High Court, Madras.

+2cc's to Mr.G.Krishna Kumar, Advocate, S.R.No.42666
+1cc to Mr.V.V.Sairam, Advocate, S.R.No.42503

Cr1.OP Nos.487 of 2013, 30341 of 2013,
17278 of 2015 and 17885 of 2015

KGK (CO)
CA(10/09/2015)