

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICAITON NO. 3497 OF 2015

JAFAR @ IBRAHIM LALBHAI SHAIKH
VERSUS
RASHIDBI HUSSAINBHAI SHAIKH AND ANOTHER

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Advocate for the applicant : Ms. A. N. Ansari
Advocate for respondent No. 1 : Mr. A. N. Nagargoje
APP for respondent No. 2/State : Mr. B. A. Shinde

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CORAM : V. K. JADHAV, J.

Date of reservation of : 20.01.2016

Order

Date of pronouncement : 28.01.2016
of Order

ORDER:-

1. By consent, heard finally.
2. The applicant/original accused seeks to quash and set aside the complaint bearing R.T.C. No. 315 of 2010 filed by respondent, pending before Judicial Magistrate First Class, Kopargaon. Respondent No. 1 has filed the said complaint for the offences punishable under Sections 465, 468, 471, 474 r/w 34 of I.P.C. Applicant/original accused has also challenged the order dated 20.05.2015 below Exh. 29 passed by Judicial Magistrate First Class, Kopargaon.
3. Learned counsel for the applicant/original accused submits that the dispute between the applicant/original accused and respondent No.1/original complainant is going on since the year 1970. Respondent

No.1/original complainant, with an intention to grab entire property left by deceased Lalbhai, had taken a stand that the present applicant is not a son of Lalbhai. After death of Lalbhai, when the present applicant approached revenue authorities for taking entry of his name in the revenue record on the death of his father Lalbhai, the dispute has started. Present respondent raised objection before the revenue authorities and accordingly, revenue authorities directed the parties to get their status decided by approaching civil court.

4. Learned counsel for the applicant/original accused submits that the present applicant, accordingly, instituted Regular Civil Suit No. 544 of 1996 for partition and separate possession of the property left by his father deceased Lalbhai. The said suit was strongly resisted by present respondent No.1, her husband and one tenant. Present respondent No.1 contested the said suit mainly on the ground that the present applicant is not the son of deceased Lalbhai, but the son of deceased Babanbhai. Learned counsel further submits that though the civil court has recorded finding in the affirmative to Issue No.1 and thereby held that the present applicant (plaintiff therein) is the son of deceased Lalbhai, dismissed the suit on the point of limitation vide judgment and order dated 29.02.2000. Being aggrieved by the same, the present applicant challenged the said judgment and decree by filing R.C.A. No. 182 of 2001. The said appeal came to be allowed by judgment and order dated 11.11.2005 passed by Additional District Judge, Kopergaon. Learned Additional District Judge upheld Issue No.1 i.e. about the relation of present applicant with

deceased Lalbhai and further held that the present applicant is having 2/3rd share in the disputed property. Learned counsel further submits that being aggrieved by the same, present respondent No.1 along with her husband preferred a Second Appeal bearing S.A. No. 12 of 2006 before this Court. This Court, by order dated 08.06.2006, confirmed the judgment and order passed by Additional District Judge, Kopargaon as referred above, and accordingly, dismissed Second Appeal No. 12 of 2006 in limine.

5. Learned counsel further submits that the decree passed by civil court has, thus, attained finality. Even the execution proceedings filed by present applicant are referred to the revenue authority for measurement and for carving out the share. The said execution proceedings also came to be finally decided vide order dated 03.05.2008 by Additional Civil Judge Junior Division, Kopargaon. Learned counsel submits that it is held by the civil court that the present applicant is the son of Lalbhai and is entitled to succeed his property. However, to pressurize present applicant and to restrain him from getting his legal share, respondent No.1 herein filed a criminal complaint against present applicant with one other, making similar allegations. It is alleged in the complaint that the present applicant/original accused has prepared false documents and accordingly, committed offence as detailed in the complaint. Learned counsel submits that in fact, each of those documents, as referred in the complaint, is considered by the civil court. Learned counsel thus, submits that continuance of proceedings in the said private complaint is an abuse of Court's process.

6. Learned counsel further submits that even the order below Exh. 29 in the said complaint, passed by Judicial Magistrate First Class, Kopargaon on 20.05.2015 is also improper, incorrect and illegal. Learned counsel submits that in a criminal case, changing name of the accused in a complaint is not permissible. Learned counsel for the applicant, in order to substantiate her contentions, places reliance on the decision in a case of ***Behram S. Doctor v. State of Maharashtra and another***, reported in ***2003 (3) B.Cr.C. 566***.

7. Learned counsel for respondent No.1 submits that present criminal application is not maintainable as an alternate efficacious remedy of filing revision is available to the applicant. Learned counsel further submits that the controversy involved in the present matter is that whether applicant is the son of deceased Lalbhai or deceased Babanbhai. The applicant/original accused, though a son of Babanbhai, is posing himself to be the son of Lalbhai by preparing forged record. Learned counsel for respondent No.1 submits the document of death certificate of Babanbhai is false and fabricated document. Learned counsel further submits that the applicant has prepared a forged document showing his false date of birth and name of his father as Lalbhai. However, on perusal of school leaving certificate as well as the extract of marriage register, it indicates that the present applicant is the son of Babanbhai and his date of birth is different. Learned counsel further submits that the present applicant, in order to grab the property of respondent No.1, prepared all forged documents. Learned counsel submits that after disposal of civil proceedings, respondent No.1

got copies of certain documents. On the basis of these documents, it is clear that the present applicant has prepared false documents and has used the same for his personal gain.

8. Learned counsel for respondent No.1 further submits that even though process was issued in the complaint, on 07.12.2010, by taking undue advantage of the said two names, present applicant avoided service of summons. Present applicant was brought before the Magistrate on warrant. The applicant has thereafter, filed application Exh.29 contending therein that he is son of Lalbhai and thus, the case filed against him may be dismissed. Accordingly, the Magistrate directed present respondent No.1 to correct the name of applicant/original accused and accordingly, the said application Exh.29 came to be disposed of. Learned counsel submits that the order passed below Exh.29 is proper, correct and legal. Learned counsel thus, submits that there is no substance in the criminal application and the same may be dismissed. Learned counsel for respondent No.1, in order to substantiate his submissions, places reliance on the decision in the case of ***Ajay Rameshwar Agrawal v. State of Maharashtra and another***, reported in ***2006 (2) Mh.L.J. (Cri.) 1106***.

9. I have also heard learned APP for respondent No.2/State.

10. On careful perusal of judgment and order dated 29.02.2000 passed by Joint Civil Judge Junior Division, Kopergaon in R.C.S. No. 544 of 1996, it appears that while considering rival pleadings of the parties, particularly

the denial of relationship of present applicant with deceased Lalbhai, learned Civil Judge has considered the genealogy of the parties to the suit in detail. Learned Civil Judge has considered the oral and documentary evidence adduced by parties to the suit in detail. Learned Civil Judge has observed that by producing on record the relevant old documents like death extract of Babanbhai, present applicant's own birth extract and by adducing evidence of one Chandulal, the present applicant (plaintiff in that suit) has satisfactorily discharged the burden to show that he is the son of Lalbhai and that his mother Chandbi was the wife of deceased Lalbhai. Learned Civil Judge has further observed that present respondent No.1/defendant No.1 in that suit, on the other hand, had not adduced any satisfactory evidence to disprove the fact that the plaintiff is the son of Lalbhai. Learned Civil Judge has accordingly, recorded the finding to Issue No.1 in the affirmative and thereby held that the present applicant/original plaintiff therein, is the son of deceased Lalbhai. In Regular Civil Appeal No. 182 of 2001, the Additional District Judge has taken the same point for determination and also recorded the findings in the affirmative and thereby held that the present applicant/appellant therein, is entitled for 2/3rd share in the suit property being the son of deceased Lalbhai. This Court, in Second Appeal No. 12 of 2006, has also considered Exh.31, which is the death extract of Babanbhai Mahammadbhai and Exh.32 i.e. the certified copy of birth certificate of the present applicant. This Court has also considered the Mutation Entry No. 1360 at Exh. 39, which is the certificate of the year 1972 wherein, the present applicant is shown as legal heir of Lalbhai, and has held that there

is no perversity in the finding recorded by both the courts below.

11. In the complaint bearing R.T.C. No. 315 of 2010, respondent No.1/original complainant has come with the same genealogy and alleged that in order to grab the property of deceased Lalbhai, the present applicant/original accused has created forged document of his date of birth posing himself to be the son of Lalbhai and also prepared a false death certificate of deceased Babanbhai. It is also alleged that the present applicant/original accused, though having knowledge about the said forged documents, initiated civil proceedings before the civil court and used the said forged documents in the said proceedings.

12. It appears from the contents of the complaint that respondent No.1/original complainant has not brought before the criminal court the facts about civil dispute and the findings recorded by the civil court about relationship of the present applicant with deceased Lalbhai, which is upheld by this Court in Second Appeal. Respondent No.1/original complainant has also nowhere pointed out to the criminal court that the findings recorded by civil court have, now, attained the finality. Thus, genuineness of the documents, which was the foundation of both civil and criminal proceedings, is now decided by the civil court and the same has attained finality. Needless to say that the verdict given by the civil court is now binding on the criminal court. The facts, which have already been determined by the civil court, now, cannot be redetermined in a criminal proceeding.

13. Respondent No.1/original complainant has now approached the criminal court with two independent documents which were not referred in the civil proceedings. Respondent No.1/original complainant has produced on record one Nikahnama and made allegations on its basis that the present applicant is the son of Babanbhai Patel. Learned counsel for the applicant, by referring the pending criminal application, has pointed out that the said Nikahnama is between one Jafar s/o Baban Patel and the name of bride is shown as Joharabi d/o Mohhamad Patel. Learned counsel thus, submits that the name of present applicant is Ibrahim @ Jafar Lalbhai Shaikh and not Jafar Baban Patel and the name of his wife Zubaida d/o Nawab Shaikh. In order to substantiate the name of applicant's wife, an identity card issued by Election Commission is placed on record before this Court. Respondent No.1/original complainant has not explained as to why the said documents were not produced before the civil court. On the contrary, respondent No.1/original complainant made allegations in the private complainant about the forged documents prepared by present applicant. In fact, the said documents, alleged to have been forged by present applicant, were considered at length in the civil proceedings and held to be relevant and genuine. On the basis of the same documents, civil court held that the present applicant is the son of Lalbhai, and accordingly, succeed to the property left by deceased Lalbhai.

14. In my considered opinion, learned Magistrate has committed a manifest error in issuing process. It is now well settled that where the allegations set out in a complaint do not constitute any offence, it is

competent to the High Court exercising its inherent jurisdiction under Section 482 of the Code of Criminal Procedure to quash the order passed by the Magistrate taking cognizance of the case. It appears that a reference is given to the civil proceedings in the criminal complaint before the Magistrate without producing relevant documents thereof. However, the Magistrate has not taken care to call upon the complainant to produce those documents. Even at the time of deciding the application Exh. 29, a finding recorded in the civil suit had been brought to the notice of the Magistrate, however, even at that stage, the same was not considered. The order passed below Exh. 29 is an improper, incorrect and illegal order. However, the same loses its significance in the light of final order passed in this criminal application.

O R D E R

- I. Criminal Application No. 3497 of 2015 is hereby allowed.
- II. Criminal complaint bearing R.T.C. No. 315 of 2010 pending before the Judicial Magistrate First Class, Kopergaon, is hereby quashed and set aside.
- III. Criminal Application is accordingly disposed of.

(V. K. JADHAV, J.)