

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.440 OF 2012

Ramchandra Narayan Nakashe		Petitioner
V/s.		
Laxman Krishna Nakashe & Anr.		Respondents

Ms. Namrata S. Bobade, i/by Mr. M.J. Bhatt,
for the Petitioner.

Mr. Niranjana Mundargi for Respondent No.1.

Smt. V.R. Bhonsale, A.P.P., for Respondent
No.2-State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 18TH JANUARY 2016.

P.C. :

1. By this Writ Petition, the Petitioner is challenging the legality, propriety and validity of the order passed by the Sessions Judge, Ratnagiri, in Criminal Revision Application No.24 of 2009, thereby quashing the process issued against Respondent No.1 by the Judicial Magistrate, First Class, Ratnagiri in C.C. No.13 of 2009.

2. The Petitioner herein has filed private Criminal Case No.13 of 2009 against Respondent No.1 and other co-accused for the various offences

of forgery, cheating etc. The allegation made against the present Respondent No.1 was that, he has falsely identified Smt. Saraswati Pundalik Nakashe as the Executor of the Gift Deed dated 8th August 2001. By the said Gift Deed, Smt. Saraswati Nakashe has gifted 2 Gunthas of her land, before the Sub-Registrar, in favour of the village. According to Respondent No.1, the co-accused has prepared a forged Gift Deed and the present Respondent No.1 has falsely identified Smt. Saraswati Nakashe before the Sub-Registrar. On this complaint, the Trial Court, after calling for the report of enquiry directed under Section 202 of Cr.P.C., was pleased to issue process against Respondent No.1 and other co-accused. Respondent No.1 challenged the said order of the issue process before the Revisional Court and the Revisional Court set aside the said order.

3. Now submission of learned counsel for the Petitioner is that, prima facie, there was sufficient material before the Trial Court in view of the statement of Smt. Saraswati Nakashe recorded in the enquiry made under Section 202 of Cr.P.C. and also the civil dispute filed between the parties and, in view thereof, the Sessions Court has committed an error by interfering with the discretion exercised by the Trial Court of issuing process against Respondent No.1. Further, according to Petitioner, Respondent No.1 is not disputing the fact that he has identified Smt.

Saraswati Nakashe before the Sub-Registrar at the time of execution of the forged Gift Deed. Hence, according to learned counsel for the Petitioner, prima facie case was made out against Respondent No.1. Therefore, the impugned order passed by the Revisional Court calls for interference and restoration of the order of issue process, as passed by the Trial Court.

4. Per contra, learned counsel for Respondent No.1 has supported the reasoning given by the Revisional Court and submitted that Smt. Saraswati Nakashe was identified before the Sub-Registrar at the time of execution of Gift Deed not only by Respondent No.1, but also by one more witness, namely, Madhukar Ragho Bavkar. No action or proceedings is initiated against him. Secondly, it is submitted that, previously also, the Petitioner has filed Criminal Case No.48 of 2007 against Respondent No.1, as power of attorney holder of Smt. Saraswati Nakashe, and the said case was withdrawn. Smt. Saraswati Nakashe herself is not coming before the Court to file any criminal case. Further, it is submitted that the alleged Gift Deed is executed in favour of the village; hence, no question of Respondent No.1 getting any advantage by execution of the said Gift Deed.

5. I find much substance in the submission made by learned counsel for Respondent No.1, because, in the first place, Smt. Saraswati Nakashe herself is not coming before the Court to file any complaint, by stating that she has not executed any such Gift Deed and she was wrongly identified by Respondent No.1. Secondly, the execution of the Gift Deed also shows that she was identified before the Sub-Registrar, not only by Respondent No.1 but also by the other person, as stated above. Thirdly, earlier Criminal Case bearing No.48 of 2007, which was filed by the Petitioner against Respondent No.1, as the power of attorney holder of Smt. Saraswati Nakashe, is also withdrawn.

6. In view thereof, prima facie, there is no material to issue process against Respondent No.1 and hence the Revisional Court has rightly quashed the impugned order of issue process. No interference is warranted therein. Petition stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]