IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2488 OF 2014

Mr. Narvada Prasad Mishra. ... Petitioner.
Versus
The State of Maharashtra & ors. ... Respondents.

Mr. Rajesh Singh, advocate for petitioner.

Mr. A.R. Patil, APP for State.

CORAM : RAVINDRA V.GHUGE, J
DATE : JULY 5, 2016

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned APP for State.

2 The Petitioner has filed this Petition challenging the legality and validity of the order dated 14/2/2014 passed by the learned Sessions Court for Greater Mumbai in the Criminal Revision Application No. 1233 of 2012, thereby upholding the order dated 3rd October, 2012

passed by the learned Metropolitan Magistrate, 66th Court at Andheri, Mumbai in Protest Petition No. 15/Misc/2010 in C.R. No. 335 of 2007.

3 This Court had issued notice to respondent Nos. 2 to 10. However, despite service of court notices, neither of these respondents have preferred to enter an appearance through an advocate nor in person.

4 The learned Counsel for the Petitioner has strenuously criticised the impugned order, by which the case registered on the basis of the FIR dated 31/7/2007, stood dismissed.

5 The contention of the Petitioner is that the original owner of the land admeasuring 2398 sq. mtrs. situated in survey No. 30 at village-Mohli has transferred and mutated the same in the names of his

three sons. The first son had four children and the second and third sons had three children each.

6 It appears that during his life time, the first son executed a Will Deed dated 11/10/1985 in favour of Jerome Joseph, thereby bequeathing him the entire large property. The said Will was however neither registered nor probated by any Competent Court of Law. In 1989, larger property was mutated in the names of the legal heirs of the deceased Joseph Anthony and other co-owners after his demise.

7 The Petitioner contends that by virtue of the deed of conveyance dated 8/12/2004, the Petitioner acquired right, title and interest in one portion of the land admeasuring 520 sq.mtrs., from the legal heirs of the original owner Mr. Anthony D'Souza. Prior to the registration of the conveyance deed, the Petitioner had given notice dated 15/9/2004 to the said Mr. Jerome D'Souza, whereby he

was intimated about the same by other co-owners and offer was made to him for selling out his shares from the said property.

8 It is contended that after the transfer of property, Mr. Jerome Joseph D'Souza dishonestly submitted an application for seeking a mutation entry to be carried out in his name in the revenue record in respect of the larger portion of the property, primarily, on the strength of an alleged Will said to have been executed by his father Late Mr. Joseph Anthony D'Souza.

9 The Petitioner strenuously contends that this Will is a fabricated document and on the strength of such a document, the land was sought to be mutated in the name of Mr. Jerome D'Souza.

10 It is contended that the Tahasildar, after considering the application as well as the objections of the Petitioner, had rejected the application filed by Mr. Jerome D'Souza on 28/4/2006, thereby

declining to carry out a mutation entry in his name. Consequentially, Mr. Jerome Joseph D'Souza filed a Civil Suit No. 793 of 2006 before this Court on 18/7/2005 seeking cancellation of the conveyance deed, as was executed by other co-owners in favour of the Petitioner. Mr. Jerome Joseph D'Souza relied upon the Will of his mother Late Mrs. Rose Mary claiming that on the basis of the said Will, he had acquired a right in the larger portion of the property. A Notice of Motion was moved seeking interlocutory relief by Mr. Jerome Joseph D'Souza, which was rejected by this Court on 28/1/2009.

11 On 17/1/2006, prior to this Court passing an order as above, the co-owners and the Petitioner herein had lodged a written complaint dated 17/1/2006 with the Sakinaka Police Station alleging that Mr. Jerome Joseph D'Souza was relying upon a forged document. The Petitioner on realising that the police authorities were not taking cognizance of the compliant, moved an application under the Right to Information Act on 26/6/2007 and since the said

application was rejected, the Petitioner had approached the Director of Directorate of Public Prosecution, State of Maharashtra and Appellate Authority. Under the directions of the Director of the Directorate of Public Prosecution, the Assistant Director submitted a report dated 23/7/2007, by which the Sakinaka Police Station registered a crime as C.R. No. 335 of 2007 under Section 465, 471, 420 and 34 of the Indian Penal Code against the respondent Nos. 2 and 3 herein.

12 The Investigating Officer addressed a letter to the Petitioner on 2/8/2007 calling upon him to certify the fabrication of the document by the accused. After the Petitioner submitted a gist of points regarding the alleged fabrication, forgery and cheating, the Investigating Officer did not take into custody the forged and fabricated original documents from the accused. The Petitioner contends that the accused and the Registrar have rectified certain lacunas and have corrected the record.

13 The Petitioner submitted four sets of the forged and fabricated documents and recorded his statement on 4/6/2008. The Registrar is said to have not furnished the original copies of the Will. It is contended that the Will is still lying with the Registrar, which is said to be jointly executed by the Late Mr. Joseph Anthony D'Souza and Late Mrs. Rose Mary Joseph D'Souza. The Petitioner had requested the Investigating Officer to send the Will to the Laboratory for ascertaining the age of the documents and for verifying the signatures.

14 It is contended that the Investigating Officer instead of taking effective steps, has started harassing the Petitioner. It is further contended that at the instance of the petitioner, the Joint Commissioner of Police had called for certain records. However, the Sr. Inspector informed that the records were placed before the learned Magistrate and hence, were not available.

15 The Petitioner submits that the Investigating Officer, in collusion with the accused, filed “C” summary report before the learned Magistrate, stating therein that the fact situation indicated that it was a civil dispute. The Petitioner raised an objection. After considering the said objection, by the impugned order dated 6/2/2010, the protest Petition was allowed and the Investigating Officer was directed to make further investigation under Section 173(8) of the Code of Criminal Procedure, 1973 considering the points suggested by the Petitioner. It is pursuant to the said order that the final report “C” summary was placed before the learned Metropolitan Magistrate. By order dated 3/10/2012, “C” summary in C.R. No. 335 of 2007 was granted and the objection raised against “C” summary was overruled.

16 Aggrieved by the said order, the Petitioner preferred Criminal Revision Application No. 1222/2012. By the impugned order dated 14/2/2014, the Revision Application was dismissed.

17 The thrust of Petitioner's case is that merely because the factual matrix in the matter indicates a civil dispute, it cannot be ignored that the crime committed by the accused in forging, fabricating the Will Deed and creating bogus documents, needs to be considered and the accused therefore, deserves to be punished for the criminal offence committed.

18 The learned Advocate for the Petitioner has placed reliance upon the following judgments :

(i) Pratibha Rani v/s. Suraj Kumar (1985(2) SCC 370.

(ii) Ravindra Kumar, Madhanlal Goenka & anr. v/s. M/s. Rugmini Ram Raghav Spinners P. Ltd. (AIR 2009 SC 2383)

(iii) Vijayander Kumar & ors. v/s. State of Rajasthan, (AIR 2014 SC (Supp) 1319)

(iv) Ganga Dhar Kalita v/s. State of Assam & ors. (2015 AIR SCW 3397)

19 The learned APP has defended the impugned orders and submits that in the supervisory jurisdiction of this Court which is limited, no interference is called for, since the impugned orders can neither be termed as perverse or erroneous. This petition is devoid of merits.

20 I have considered the submissions of the learned Advocates.

21 The Petitioner has specifically stated that the share of the property, which has been passed on to him is presently in his possession. It is on the basis of the forged Will that the accused have initiated a Civil Suit No. 793 of 2006 and the same is pending

adjudication. The Petitioner does not dispute that the said suit preferred by the accused is aimed at acquiring share in the property, which is in the possession of the Petitioner and for the purpose of succeeding in the suit, the accused will have to rely upon the same Will, which the Petitioner contends to be a false and forged document.

22 In my view, the truthfulness of the said Will would be scrutinised on the basis of evidence, by the Civil Court and if the said Will is proved to be a forged document, the pending suit filed by the accused would have to be dismissed and the rights, title and interest of the Petitioner in the property would be crystallised. The said document will therefore be tested in Law.

23 The learned Magistrate has considered the points put forth by the Petitioner, which have been listed from Sr. No. 1 to 8 in the Order dated 3rd October, 2012 and which read as under :

"1. How deceased Rozi Mary D'Souza could execute a Will for whole property when she have only 1/12 share in it ?

2. Whether deceased can request the Sub Registrar to open the envelop and whether such type of request can be considered and Will envelope can be opened ?

3. The Competent Authority initially refused to register the Will Deed, then how that Will Deed subsequently is registered and when it was registered ? There are corrections shown made in the concerned register about the name of the person who requested to open the sealed envelope.

4. That Will Deed is show registered on 15/10/1985 but the witnesses have signed the same on 19/11/1985. There are different types of seal on the copies of Will Deed provided to Zoram D'Souza and so the said Deed is not a genuine Deed.

5. There is no receipt number and required information about payment of the registration fees of the said Will Deed and therefore the Will Deed is forged and bogus.

6. There is different in the name of person who has shown executed the Will Deed. The date of registration, the date of execution and the date of endorsement of Competent Authority are different.

7. When the Will Deed was in existence, why it was not disclosed by Zoram D'souza till 20/9/2004 ?

8. When the Will Deed was executed in the year 1985, how stamp paper was purchased in the year 1990 ?

24 Considering the said 8 points as above, it is apparent that all these aspects would be a matter of adjudication before the Civil Court. The Petitioner has strenuously contended that the Will Deed is a forged document and no claim put forth by the accused on the basis of such a document could be established. The record reveals that it is yet to be established that the said Will Deed has been registered or not, though the Petitioner contends that it is shown to be registered

on 15/10/1982 and the witnesses have signed the same on 19/11/1982.

25 It is in this backdrop that considering the issues raised by the Petitioner including the aspects of purchasing of a stamp paper, preparation of the Will Deed, opening of the Will envelop etc. will have to be gone into by the Civil Court in the pending Civil Suit. It needs no debate that if in the civil suit, it is proved that the said Will is a forged document and it is on the basis of the said alleged act of forgery that the accused have based their claim, the trial Court can surely exercise its authority within the jurisdiction vested in it by the law to deal with a litigant who has made an effort to seek a judicial decree on the basis of a forged document. The Hon'ble Supreme Court in the case of **Kishore Samrite v/s. State of U.P. reported in (2013) 2 SCC 398,** clearly lays down the law that a litigant who has attempted to play a fraud on the Court can be dealt with by the Court.

26 The order dated 3rd October, 2012 by which the learned Metropolitan Magistrate has accepted “C” summary has been assailed by the Petitioner before the learned Additional Sessions Judge in his revisional court. The revisional court, on the basis of the factual matrix as is recorded above, has also agreed with the conclusion of the Magistrate and has observed that the issues like genuineness of the Will, competency of the testator to bequeath the property under the Will, the genuineness of attestation of the Will etc. will have to be considered by the Civil Court in the pending civil suit.

27 The view taken by the Hon'ble Apex Court in the case of **Pratibha Rani(cited supra)**, in paragraph-21 of the Judgment lays down the Law that two remedies, if are available to a litigant, they would enable the litigants to sue the wrongdoer even in the criminal law. Only because a civil remedy is available, that the criminal prosecution would not be barred. It was therefore, held that the two

remedies are not mutually exclusive, but are clearly coextensive and essentially differ in their content and consequence.

28 In the said **Pratibha Rani's case (cited supra)** the personal belongings of the said lady like jewellary, clothing were kept under lock and key and it was in this backdrop, that the dishonest intention of the husband amounted to criminal breach of trust and hence, criminal law was set in motion. The reliance placed upon the reported Judgments in the matter of **Ravindra Kumar(cited supra), Vijayander Kumar(cited supra) and Ganga Dhar Kalita(cited supra)** are based on the facts of the surreptitious sale of properties and similar crimes.

29 In the instant case, the Petitioner is alleging that the Will has been forged. The said allegation has been the defence of the Petitioner in the civil proceedings. The entire dispute, as has been rightly observed by the court below, is of a civil nature. Prima facie, I

am of the view that the Petitioner has pursued the criminal complaint filed by him, probably with oblique motives. Intention appears to be to exert pressure on the accused, who are plaintiffs in the suit, with regard to the Will, on the basis of which they are claiming right, title and interest in the property and the entire dispute is subjudice in the civil proceedings.

30 I do not find any purpose or any other logic, except for the above object, that the Petitioner has chosen to set the criminal law into motion.

31 Considering the above and the revisional powers of this Court, I do not find that the impugned orders deserve to be interfered with merely because a second view could be possible. This Petition being devoid of merits is therefore, dismissed.

(**RAVINDRA V.GHUGE**, **J)**