

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) CRM No.M-27740 of 2014 (O&M)

Giri Raj and another
...Petitioners

Versus

Nitesh Mohan Sharma
...Respondent

(2) CRM No.M-27749 of 2014 (O&M)

Apra Korpai
...Petitioner

Versus

Nitesh Mohan Sharma
...Respondent

(3) CRM No.M-32522 of 2014 (O&M)

Joshika Vasudeva
...Petitioner

Versus

Nitesh Mohan Sharma
...Respondent

Date of Decision: November 08, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sushil Jain, Advocate
for the petitioners.

Mr.Ritesh Pandey, Advocate
for the respondent.

INDERJIT SINGH, J.

All the above-mentioned cases are taken up together being

arisen from same criminal complaint.

Petitioners have filed these petitions under Section 482 Cr.P.C. for quashing of criminal complaint No.179 dated 21.08.2012 titled as “Nitesh Mohan Sharma vs. Apra Korpai and others” under sections 420, 467, 468, 471 and 120-B IPC along with all subsequent proceedings arising therefrom including the summoning order dated 15.02.2014 passed by learned Judicial Magistrate Ist Class, Batala.

Notice of motion was issued and learned counsel for the respondent appeared and contested the petitions.

From the record, I find that Nitesh Mohan Sharma filed a complaint against Apra Korpai, Joshika Vasudeva, Giri Raj and Sarla Tomar under Sections 420, 467, 468, 471 and 120-B IPC. It is stated in the complaint that accused No.1 and 2 are real sisters of complainant and complainant has another brother namely Neeraj Mohan Sharma, who is residing abroad for the last so many years. Parents of the complainant and accused, performed the respective marriage of accused No.1 and 2, long ago and since then, accused No.1 and 2 are permanently residing with their respected families at Sonipat and Bangalore respectively. Both the accused are very well settled in their respective families and are happily living in their respective matrimonial homes. It is also the case of the complainant that since the brother of the complainant has been residing abroad and accused No.1 and 2 were residing in their respective matrimonial homes, the complainant served his parents till their respective deaths. Father of the complainant died on 18.09.2009 and mother namely Smt.Pratibha Sharma died on 25.03.2011. It is the case of the complainant that Smt.Pratibha

executed her last legal, valid and registered Will dated 08.01.2008, in favour of the complainant and his wife Smt.Neeraj Sharma. Soon after the death of mother of the complainant, the accused came to Batala and raised a demand of ₹50 lacs from the complainant on the ground that the mother of the parties had left moveable and immoveable property with the complainant.

The accused filed a civil suit for declaration, mandatory injunction, possession etc. against the complainant, his wife and brother Neeraj Mohan Sharma, which is pending in the Court of Civil Judge, Batala. It is stated by the complainant that Smt.Pratibha Sharma never executed alleged Will dated 28.02.2011. She has retired from Education Department and the alleged Will is thumb marked, therefore, only on this ground, this will is proved to be forged one.

The complainant in the preliminary evidence, examined himself as CW-1, his wife Neeraj Sharma as CW-2. The complainant also examined R.K.Goyal, Clerk, OBC Batala as CW-3, Raghbir Singh, Deed Writer as CW-4 and CW-5 Rahul Sharma, witness of the Will which is in favour of the complainant.

Learned JMIC, Batala vide order dated 15.02.2014, summoned all the accused for commission of offence punishable under Sections 420, 467, 468, 471 and 120-B IPC.

After hearing learned counsel for the parties as well as learned State counsel and after going through the record, I find that accused No.1 and 2 stated to have filed a civil suit which is pending in the Court for decision on the basis of Will in their favour. No finding has come from the

Court at this stage showing any forgery of the document. The only ground

taken in the complaint regarding forgery of the Will in favour of the accused is that it is thumb marked by Smt.Pratibha Sharma, whereas, she retired from the education department and was well educated.

Learned counsel for the petitioners relied upon the medical record showing that at that time, Smt.Pratibha Sharma was ill and further placed on record the bills regarding medical expenses running into lacs, which amount learned counsel for the petitioners states to have been spent by the petitioners. No evidence has been produced by the complainant, at this stage, to show that the thumb impression on the Will dated 28.02.2011 is not of her mother but of some other person. Un-registered will is as good as a registered Will. At this stage, from the evidence on record, I find that merely the fact that Will has been thumb-marked by Smt.Pratibha Sharma, itself will not prove that it is an act of forgery or it is a fabricated or forged document.

As already discussed, there is no finding of any Court, at this stage, to show that the Will dated 28.02.2011 is forged or fabricated document. There is no preliminary evidence on the record to show that the thumb impression on un-registered Will is not of Smt.Pratibha Sharma. Thereafter, at this stage, no sufficient ground is made out for summoning the accused-petitioners. The filing of the complaint is nothing but abuse of process of law and this complaint has been filed only to put pressure upon the accused-petitioners and amounts to miscarriage of justice. Otherwise also, from the record, it looks that the case is of civil nature and civil suit is already pending. It is for the civil Court to decide either Will executed in favour of complainant is valid or not.

and the same are allowed. Criminal complaint No.179 dated 21.08.2012, summoning order dated 15.02.2014 passed by learned JMIC, Batala and all subsequent proceedings arising therefrom, are hereby quashed.

November 08, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No