

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1640 OF 2016

1. Dr. Ravindra s/o Biharilal Gangwal
Age: 60 years, Occu.: Medical Practitioner,
R/o Belapur Bk., Tq. Shrirampur,
Dist. Ahmednagar.
2. Gokul Jagannath Kolse
Age: 43 years, Occu.: Business,
R/o Umbargaon, Tq. Shrirampur,
Dist. Ahmednagar.
3. Somnath Bahiru Ohol
Age: 43 years, Occu.: Service,
R/o Ramgad, Belapur,
Tq. Shrirampur, Dist. Ahmednagar.
4. Sharadkumar Phulchand Pahade
Age: 69 years, Occu.: Business,
R/o Kumbhar Galli, Sawta Maharaj Road,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.
5. Govind Bansilal Shirgod
Age: 63 years, Occu.: Business,
R/o Belapur, Tq. Shrirampur,
Dist. Ahmednagar.
6. Pramod Kesharchand Mutha
Age: 59 years, Occu.: Labour,
R/o Belapur, Tq. Shrirampur,
Dist. Ahmednagar.

..PETITIONERS

VERSUS

1. Dr. Ramesh s/o Biharilal Gangwal
Age: 69 years, Occu.: Labour,

R/o Belaupur, Tq. Shrirampur,
Dist. Ahmednagar.

2. State of Maharashtra

..RESPONDENTS

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Mr. D.R. Adhav, Advocate for petitioners.
Mr. S.D. Tiwshikar, Advocate for respondent no.1.
Mr. S.Y. Mahajan, A.P.P. for respondent no.2.

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CORAM : V.L. ACHLIYA, J.
DATED : 07th SEPTEMBER, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of the parties, petition is heard finally at the stage of admission.

2. Petitioners herein have filed this petition claiming the relief as under:-

“C) The impugned judgment and order dated 09/11/2016 passed by the Ld. Additional Sessions Judge Shrirampur in Criminal Revision Petition No. 44/2011 and the impugned judgment and order dated 25.8.2011 passed by the Ld. J.M.F.C. Shrirampur in OMA NO. 269/2009 (RTC No. 190/2011) thereby issuing process under Sec. 420, 467 and 468 r.w. 34 of Indian Penal Code may kindly be quashed and set aside by issue of writ of certiorary or any other appropriate writ, order or directions.”

3. In view of the settlement arrived in between Petitioner No.1 and Respondent No.1 to put an end the civil and criminal litigations pending between them in terms of compromise pursis filed, which is marked as "X", it is not necessary to discuss the facts in detail.

4. Petitioner No.1 and Respondent No.1 are the real brothers. Both are Doctors by profession. Their father Dr. Biharilal Gulabchand Gangwal died on 20th January, 2000. He was succeeded by his wife Sumanbai and four sons which include Petitioner No.1 and Respondent No.1 and one married daughter. He left behind some movable and immovable property. Respondent No.1 filed an application under Section 156(3) of the Code of Criminal Procedure before the Court of Judicial Magistrate First Class, Shrirampur, Dist. Ahmednagar alleging therein that the petitioners herein have committed offences punishable under Sections 192, 193, 404, 405, 406, 420, 423, 463, 464, 465, 467, 468 read with Section 34 of the Indian Penal Code. It is alleged that in order to grab the entire property, Petitioner No.1 has made false and bogus will of deceased Biharilal Gangwal with the help of Petitioner Nos.2 to 6. Respondent No.1 had approached the concerned police station for lodging complaint against the petitioners. However the police have refused to take cognisance of his complaint though offence of cognizable

nature made out in his complaint. He, therefore, urged to direct the police to investigate the complaint. Acting upon the application/complaint filed by the complainant, the learned Judicial Magistrate First Class, Shrirampur directed the officer in-charge of the Police Station Shrirampur, Dist. Ahmednagar to investigate the complaint. Pursuant to the order passed under Section 156(3), offences punishable under Sections 192, 193, 404, 405, 406, 420, 423, 463, 464, 465, 467, 468 read with Section 34 of the Indian Penal Code came to be registered against the petitioners vide C.R. No. 305 of 2009. The offences were registered on 14th November, 2009. After registering the offences, the police have investigated the complaint. On the basis of investigation, the police filed report dated 15th November, 2009. In the report filed, the investigating officer has mentioned that the grievance made in the complaint is purely dispute of civil in nature and Regular Civil Suit No. 117 of 2009 filed by respondent – complainant on 27th August, 2009 is pending in the Court of Civil Judge, Shrirampur. Vide order dated 25th August, 2011, the learned Magistrate pleased to take cognisance of the complaint filed by the complainant and issued process under Sections 420, 467, 468 read with Section 34 of the Indian Penal Code as against the petitioners. Being aggrieved the petitioners challenged said order by filing Criminal Revision Petition No. 44 of 2011. By judgment and order

dated 20th September, 2011, the learned Additional Sessions Judge, Shrirampur dismissed the revision as not maintainable. The learned Additional Sessions Judge, Shrirampur held that the order of issuance of process being interlocutory order, revision petition is not maintainable. The said order came to be challenged before this Court by way of Criminal Writ Petition No. 751 of 2012. By judgment and order dated 23rd November, 2012, this Court (Coram: T.V. Nalawade, J.) allowed the revision petition and set aside the order passed by the learned Additional Sessions Judge, Shrirampur by holding that the revision petition is maintainable against the order of issuance of process and remanded the case for fresh decision. On remand, the learned Additional Sessions Judge has again rejected the revision petition vide judgment and order dated 09th November, 2016. Being aggrieved, the petitioners have approached this Court.

5. During the pendency of the proceeding, this Court (Coram : T.V. Nalawade, J.) vide order dated 20th March, 2017 referred the matter to the Court appointed mediator for amicable settlement between the parties. The mediator has submitted report to effect that the mediation has failed. On 28th July, 2017, when the matter was listed before this Court, it was noticed that Petitioner No.1 and Respondent No.1 are real

brothers and the dispute on account of property leads to filing of civil as well criminal proceedings amongst them. Their mother aged about 92 years also dragged into litigation. In this view, the learned Counsel representing the parties were asked to keep Petitioner No.1 and Respondent No.1 present in the Court so as to explore the possibility of mutual settlement. On 04th August, 2017, Petitioner No.1 and Respondent No.1 appeared before the Court. On the intervention of the Court, Petitioner No.1 and Respondent No.1 have agreed to settle all the pending civil and criminal litigations amongst them. It was decided by Respondent No.1 to give up his 1/6th share in the suit property by accepting an amount of Rs.4,50,000/- from Petitioner No.1 and the parties have decided to settle/withdraw the pending cases. They have filed joint compromise pursis which is marked as "X" for identification. The terms of the compromise reads as under:-

"1) That, it is decided by the petitioner no.1 and respondent no.1 that all the pending proceedings of Civil and criminal types will be withdrawn and both brothers will not litigate against each other in any court of law hence forth. That, it is also decided by the petitioner no.1 and respondent no.1 to fully obey and respect the deed of will executed by late Shri Biharilal s/o Gulabchand Gangwal (father of the both) in the year 1982. That, both brothers have decided to amicably settle all the matters in

view of older age of their mother Sumanbai and in the interest of her mental peace and family relations.

2) That, it is decided that the respondent no.1 will not pursue the judgment and decree passed in his favour by Hon'ble the Civil Judge S.D. Shrirampur vide RCS No. 47/2012 dated 3/5/2016. It is also agreed and accepted to respondent no.1 that he will not file any execution proceeding based on above judgment of Civil Court.

3) That, it is also accepted and decided by respondent no.1 that, he completely and permanently forfeit his 1/6th share in the ancestral property left behind by late Shri. Biharilal Gulabchand Gangawa in favour of petitioner no.1 Dr. Ravindra Biharilal Gangawal.

4) That, towards the above forfeiture of 1/6th share by respondent no.1, the petitioner no.1 today paying respondent no.1 an amount of total Rs.4,50,000/- by issuing A.C. payable cheques in his favour. That the description of the cheques is as follows:

1) The cheque bearing no. 011960 of Nagar Urban Cooperative Bank, branch Belapur, of Rs.2,50,000/- dated 1/9/2017 from Account No. 4129=1002.

2) The cheque bearing no. 011961 of Nagar Urban Cooperative Bank, branch Belapur, of Rs.2,00,000/- dated 1/10/2017 from Account no. 4129=1002.

5) That, it is accepted to the respondent no.1 that, the criminal case filed by him before Hon'ble J.M.F.C. Shrirampur bearing RTC No. 190/2011 will be dismissed

by allowing this writ petition pursuant to this compromise. The respondent no.1 humbly consents this dismissal.

6) That, it is also agreed and accepted to the petitioner no.1 that he will withdraw the appeal bearing RCA No. 20/2016 filed by him before Hon'ble District Judge, Shrirampur in view this compromise and respondent no.1 will give the pursis of his waiver of 1/6th share in property in favour of petitioner no.1.

7) That, it is also decided and accepted that, the respondent no.1 and petitioner no.1 both will file common pursis before Divisional Commissioner, Nashik and seek withdrawal of RTC Appeal No. 416/2016. Similarly RCA NO. 32/2015 filed by petitioner no.1 and pending before Hon'ble District Juge Shrirampur will be withdrawn.”

6. Pursuant to the compromise arrived between Petitioner No.1 and Respondent No.1, they decided to appear before the respective Courts and file appropriate application/compromise pursis to get disposed of all the pending proceedings. Vide order dated 20th August, 2017, they were directed to appear before the respective Courts on 01st September, 2017 and file appropriate application/compromise pursis to settle all the pending civil and criminal proceedings amongst the parties and appear before this Court on 06th September, 2017. On 06th September, 2017, it is reported that application/compromise pursis has

been filed in the pending appeal and the appeal has been disposed off as per settlement. It is further reported that criminal case could not be withdrawn as the learned Magistrate expressed the view that the application for withdrawal of the complaint cannot be entertained by him. In view of this, Petitioner No.1 and Respondent No.1 have approached this Court and urged to quash the criminal proceeding by consent.

7. In view of the overall nature of the disputes and the settlement arrived, I am of the view that there is no point to proceed with the matter by the trial Court. If we consider the overall allegations made in the complaint, then it is alleged that Dr. Biharilal Gulabchand Gangwal, the deceased was not in a position to execute such will due to mental and physical disability. It is alleged that taking disadvantage of the serious illness and incapacity, the Petitioner No.1 has obtained his signature on the blank paper and got scribed the contents as that of will so as to grab the entire property. If we consider the report of the investigation submitted by the Investigating Officer, then it make out no case to prosecute petitioners. During the course of investigation, the statements of various persons were recorded. So also number of documents were collected. Perusal of the order of issuance of process reveals that the

report of investigation submitted by the investigating officer not at all taken in consideration while passing the impugned order. In this view, the order passed by the learned Magistrate appears to be passed without proper application of mind. The civil dispute amongst the Petitioner No.1 and Respondent No.1 leads to filing of criminal complaint. They have decided to put an end to all the litigations between them.

8. Thus, considering the overall facts of the case and the compromise arrived at in between the Respondent No.1 - complainant and Petitioner No.1 - Accused No.1, the complaint filed by Respondent No.1 deserves to be quashed. In this view, I am inclined to allow the petition in terms of prayer clause "C". Criminal proceeding pending against the petitioners filed at the instance of Respondent No.1 in the Court of Judicial Magistrate First Class, Shrirampur stands quashed. The petitioner – accused stands discharged from that case.

9. Rule made absolute in the above terms.

(V. L. ACHLIYA, J.)

SSD