

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

**CRM No.M-2871 of 2013 (O&M)
Date of Decision: October 03, 2017**

Parveen Kaur and others

...Petitioners

VERSUS

Dr.Harinderjit Singh Auluck

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vikas Behl, Senior Advocate with
Mr.Narinder Kumar Vadehra, Advocate
for the petitioners.

Mr.J.S.Lalli, Advocate
for the respondent.

INDERJIT SINGH, J.

The petitioners have filed this petition under Section 482 Cr.P.C. against respondent Dr.Harinderjit Singh Auluck for quashing the complaint under Sections 406, 420, 465, 467, 468, 471, 120-B IPC bearing criminal case No.553 dated 02.12.2008, summoning order dated 27.07.2011 and all the consequential proceedings.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that a complaint was filed by complainant-respondent Harjinderjit Singh Auluck against Parveen Kaur,

DR.Jasbir Singh and Prem Manchanda, under Sections 406, 420, 465, 467, 468, 471 and 120-B IPC. The brief averments of the complaint as noted down by learned JMIC, Ludhiana, are as under:-

“The brief facts of the complaint as alleged by the complainant are that the complainant is a Non-Resident Indian and a senior Doctor practicing with the department of Mental Health, California, USA. The complainant and accused No.1 are the real brother and sister and their father was the owner in possession of House No.41-B, Sarabha Nagar, Ludhiana who died on 04.11.2006. The complainant and accused No.1 Parveen Kaur are his only children. The father of complainant and accused had executed a Will dated 20.07.1993 under the undue influence of accused No.1 who was residing with him at that time, wherein the father of the complainant had bequeathed his said property to the mother of the complainant and Parveen Kaur in equal shares. The mother of the complainant died intestate on 13.11.2006 soon after the death of the father of complainant, complainant and Parveen Kaur became owner in joint possession of said property to extent of 1/4th share and 3/4th share respectively.

It has further been averred that accused No.1 Parveen Kaur, in criminal conspiracy with accused No.2 and 3 forged and fabricated a Will dated 14.05.1996 alleged to have been executed by the mother of the complainant through which the said accused have illegally and unlawfully tried to usurp 1/4th share of the complainant in the said property and accused No.2 and 3 signed the said Will as witnesses knowing fully well that the above said Will is forged and fabricated documents which was prepared with the sole purpose of cheating the complainant and illeglly grabbing the share of the complainant inthe said property. Accused No.1 also fabricated a letter dated 04.04.2004 by forging the signatures of the complainant on it whereas the complainant has never written and signed the said alleged letter. By said illegal act, the accused No.1 lawfully succeeded and to illegally grab the share of the complainant in the said property.

It has further been averred that after committing the above said illegal acts, accused No.1 submitted the said forged and fabricated document i.e. Forged Will and letter before the Court of Sh. Kuldeep Singh, the then Ld. CJJD, Ludhiana in a civil suit titled as Dr. Harinderjit Singh Auluck Vs. Parveen Kaur for declaration filed by the complainant claiming his share in the said property as well as for separate possession. In the said civil suit, the application under Order 39 Rule 1 and 2 CPC restraining accused No.1 from alienating the said property was passed vide order dated 11.05.2007. Accused No.1 had submitted a false affidavit before the Municipal Corporation, Zone-D, Ludhiana to get the said

property entered only in her name in the Municipal record and in the said false affidavit she has falsely and illegally claimed herself to be the exclusive owner of the whole of the said property on the basis of Will dated 20.07.1993 of father of the complainant, whereas in the said Will the property was bequeathed to accused No.1 and Jaswant Kaur in equal shares. Neither the said affidavit has any reference to either the forged and fabricated Will dated 14.05.1996 or to the fabricated letter dated 04.04.2004 nor copies of said documents were submitted before the Municipal Corporation, Ludhiana meaning thereby that no such Will and letter existed at that time and had been forged and fabricated later on, under criminal conspiracy in order to usurp the property of the complainant.

It has further been averred that the accused No.2 and 3 in criminal conspiracy with accused No.1, illegally and with fraudulent intentions have witnessed the said will and accused No.3 is purported to have hand written the same, whereas the alleged executants was already dead at the time the said Will was forged and fabricated by the accused. Moreover, Sh. Jaswant Kaur Auluck, mother of the complainant and accused No.1 could read and write in Punjabi and always used to sign the documents in Punjab and never thumb marked as has been done by the accused in the same Will. Complainant moved an application for registration of FIR against the above said accused before the Director General of Police, Punjab on which the Deputy Superintendent conducted a biased enquiry despite the fact that the complainant's attorney fully cooperated with the said enquiry. So much so, that on the asking of the said officer, the admitted signatures of the complainant issued by Bank of America and attested by Notary Public were also submitted before the police and it was also brought to the knowledge of the police that the original of the forged and fabricated Will dated 14.05.1996 and letter dated 04.04.2004 are in possession of accused No.1. But the enquiry file was consigned by the police under the influence of the accused as accused No.1 claimed herself to be the wife of Director General of police which is also false and a mis-statement on the part of accused No.1. Hence, the present complaint."

Learned JMIC, Ludhiana, vide impugned order dated 27.07.2011 summoned the accused under Sections 406, 420, 465, 467, 468, 471 and 120-B IPC. Aggrieved from the above-said order, present petition has been filed.

case, Parveen Kaur is sister of the complainant. Father of the complainant as well as accused Parveen Kaur namely Dharam Singh Auluck executed Will in favour of Parveen Kaur his daughter and his wife Jaswant Kaur. This Will has not been challenged. Dharam Singh died on 04.11.2006. It is the case of the petitioners that mother of petitioner Amandeep Kaur executed Will in her favour on 14.05.1996 and she died on 13.11.2006. A civil suit has been filed by the complainant qua inheritance on 02.03.2007, the copy of which is at Annexure P-3. Written statement was filed on 24.07.2007 in that civil case. The civil suit is still pending in which the validity of this Will, which is stated by complainant to be forged, is to be determined by the Civil Court. The Civil Court has not given any finding that Will is surrounded by suspicious circumstances.

The present complaint has been filed by the complainant/respondent on 02.12.2008. The complainant examined Surinder Kumar Dhingra, Clerk-cum-Cashier, Indian Overseas Bank as CW-2 and complainant examined himself as CW-1. No report of any Handwriting and Fingerprint Expert has been produced by the complainant to show prima facie that thumb impression affixed on the Will dated 14.05.1996 is not of mother of the complainant but is of somebody else.

Learned counsel for the petitioners argued that Jaswant Kaur was suffering from Cerebral Atrophy from the year 1996 till death and she was incapacitated due to illness and position gradually worsened. Otherwise also, it is possible that due to disease or old age, Jaswant Kaur affixed her thumb impression. The mere fact that there are no signatures on the Will but only thumb impression, I find that without getting it compared

ground, it cannot be held that Will is forged one. Moreover, no other document has been shown to be forged one. There is only statement of complainant in preliminary evidence and one Clerk from the bank has been examined.

It is clear from the record that civil suit has been filed by the complainant on 02.03.2007, in which written statement was filed on 24.04.2007 discussing all these facts. If the complainant was knowing since 24.04.2007 that Will is thumb marked, then why he kept silent and filed complaint after 1 year 8 months. It looks that this complaint in question has been filed to put pressure upon the petitioners in the civil suit. As already discussed, as the civil suit is pending and no finding has yet come nor any Expert etc. has been examined, to prima facie show that any document is forged one, I find that filing of present complaint is nothing but abuse of process of law.

Therefore, finding merit in the present petition, the same is allowed. Criminal case No.553 dated 02.12.2008 under Sections 406, 420, 465, 467, 468, 471, 120-B IPC, summoning order dated 27.07.2011 passed by learned JMIC, Ludhiana and all subsequent proceedings arising therefrom, are hereby quashed.

October 03, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No