

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No.M-32789 of 2013

Date of Decision: 7th March, 2017

Renuka Kalyan wife of late Nabheet Kalyan

..Petitioner

Versus

Rajinder Singh Cheema, Senior Advocate

..Respondent

**CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE A.B.CHAUDHARI, JUDGE.**

Present: Mr. Ranbir Singh, Advocate,
for the petitioner.

Mr. R.S.Rai, Senior Advocate with
Mr. K.S.Nalwa, Advocate and
Mr. Anurag Arora, Advocate, for the respondent.

..

S.J. VAZIFDAR, CHIEF JUSTICE:

This is a petition under section 482 of the Code of Criminal Procedure against the order of the learned Additional Sessions Judge, Karnal dismissing Criminal Revision No.199 of 2011 filed by the petitioner-complainant.

2. The petitioner filed the complaint dated 15.06.2010 before the Court of the learned Illaqa Magistrate, Karnal.

3. Before the learned Judicial Magistrate Ist Class, the petitioner was the complainant and respondent Nos.1 to 5 were one Ram Kumar Kalyan, his wife Om Lata Kalyan, Pardip Chaudhary, Honey Chaudhary and Rajinder Singh Cheema, a Senior Advocate, respectively. Respondent No.5 is the sole respondent before us.

4. The learned Judicial Magistrate Ist Class summoned only accused/respondents No.1 to 4 and not respondent No.5 under sections 420, 467, 468, 471 read with section 120-B of the Indian Penal Code.

5. The petitioner-complainant filed Criminal Revision No. 199 of 2011 against the order of the learned Judicial Magistrate Ist Class in so far as respondent No.5 i.e. the Advocate was not summoned. The learned Additional Sessions Judge having dismissed Criminal Revision No. 199 of 2011, the complainant has filed the present petition under section 482 of the Code of Criminal Procedure to set-aside the order dated 19.09.2011 passed by the learned Judicial Magistrate Ist Class, Karnal and the order dated 04.04.2013 passed by the learned Additional Sessions Judge in so far as the said orders declined to summon respondent No.5.

6. Respondent Nos.1 to 4 had filed Civil Revision No. 39 of 2012 before the Court of learned Additional Sessions Judge, Karnal against the order of the learned Judicial Magistrate Ist Class, in so far as it summoned them under the provisions of the Indian Penal Code which was dismissed by the learned Additional Sessions Judge. This petition is not concerned with the same.

7. One Nabheet Kalyan was the son of Ram Kumar Kalyan and Om Lata Kalyan (respondents No.1 and 2 before the JMIC). The complainant was married to Nabheet. Respondent Nos.3 and 4 before the Judicial Magistrate Ist Class are the attesting witnesses of an alleged will of the late Nabheet. Respondent No.5 before the Judicial Magistrate Ist Class and the only respondent in this petition is a senior Advocate who practices in this Court.

8. The petitioner filed the complaint dated 15.06.2010 before the Court of learned Illaqa Magistrate, Karnal. The complaint, inter-alia, states as follows:-

The petitioner was married to the said Ram Kumar Kalyan's son, namely, Nabheet Kalyan. On 22.04.2008, a tragic incident took place at her marital home in which Nabheet and the petitioner's brother Sramveer died on account of bullet wounds. The petitioner was also injured in the firing. A criminal complaint titled as Renuka v. Ram Kumar Kalyan and Om Lata Kalyan and others was filed under sections 302, 307 read with section 34 of the Indian Penal Code and under the provisions of the Arms Act. Ram Kumar Kalyan was convicted whereas Om Lata Kalyan was acquitted by the Court of learned Additional Sessions Judge, Karnal. Ram Kumar Kalyan challenged that conviction order by filing Criminal Appeal-D-922 of 2011. The petitioner filed Criminal Appeal-AD-12 of 2015 against the order of acquittal of Om Lata Kalyan. By a separate order and judgment we disposed of both the appeals. We have allowed Ram Kumar Kalyan's appeal and dismissed the petitioner's appeal.

For the purpose of this petition, it is sufficient to note only a few facts about the incident. There were disputes between the petitioner and her husband as well as her in-law's. The petitioner's case is that on account of the constant harassment she had to leave the matrimonial home. On 22.04.2008 her husband Nabheet came to her parent's home and forcibly took away their minor daughter Ananya. The petitioner and her brother Sramveer went to the petitioner's in-laws house in the night on 22.04.2008. Pursuant to an altercation and Nabheet's manhandling the petitioner,

Sramveer shot Nabheet dead with a pistol which belong to the petitioner's father Ranbir Singh, an Advocate of considerable standing. This petition was argued by Mr.Ranbir Singh on behalf of his daughter, the petitioner. The petitioner's father alleged that he had taken the pistol without his consent by breaking his almirah. The petitioner's case is that thereafter Sramveer shot himself in the chest. The evidence in that case indicates that the shot was itself fatal and that Sramveer would have died within a minute. The petitioner's case, however, was that before Sramveer died, Ram Kumar Kalyan picked up the pistol which had fallen from Sramveer hands on receiving the first shot and shot him in the neck, causing Sramveer's death. The petitioner further alleged that Ram Kumar Kalyan at the instigation of his wife Om Lata not only shot Sramveer but also tried to kill her by firing at her. Fortunately, she survived on account of the prompt medical treatment.

For the purpose of this petition what transpired thereafter in the course of negotiations between the families is relevant. In this regard, the complaint continues as follows:-

The incident took place at 11.45 P.M. on 22.04.2008. On 24.04.2008, the respondent R.S.Cheema, Advocate (respondent No.5 before learned JMIC and the learned ASJ, Karnal) contacted the petitioner's father Ranbir Singh on the phone assuring him that he would get the matter amicably resolved and that Ram Kumar Kalyan and his maternal uncle one Ram Kishan had already contacted him in this regard and were also interested in an amicable settlement. The complainant's father Ranbir Singh consented to the same. The

respondent was Ranbir Singh's classmate in law college at Kurukshetra University and a colleague in the profession. Ranbir Singh is an Advocate of about 30 years standing. As per the respondent's instructions, Ranbir Singh, his brother-in-law Harbhajan Singh, Ram Kumar Kalyan and Ram Kishan visited the respondent's office at Chandigarh. At the meeting, the transfer of Nabheet's property was discussed. Respondent No.5 stated that the matter be left to him and that he would himself manage and find out a way to transfer Nabheet's properties in a genuine and impartial manner. The respondent asked Ram Kumar Kalyan to bring all the documents pertaining to the property before 15.05.2008 and directed both the parties to meet him at his office on 17.05.2008. On 17.05.2008, the respondent stated that he would manage to give the petitioner and her minor daughter their due share in Nabheet's estate. He also stated that before the settlement he would get the FIR No.182 cancelled. The FIR was filed by Ram Kumar Kalyan soon after the incident in which he had made allegations inter-alia of conspiracy against the petitioner and her family. Respondent No.5 mentioned that he was to leave for Canada on 28.05.2008. On 26.05.2008 Ram Kishan, Ranbir Singh and Harbhajan Singh attended the respondent's office with blank stamp papers for preparing the affidavits of both the parties for cancellation of FIR No.182. The affidavits were dictated by the respondent. The same was transcribed on the computer by the respondent's junior. Original affidavits alongwith copies thereof were handed over to both the parties with instructions to bring them back to the respondent's office after they were attested so that he could keep them in his custody till the matter was

settled. Respondent No.5, however, handed over the same to Ram Kumar Kalyan and Ram Kishan for submitting the same before the police for cancellation of the FIR. On the basis thereof the police had recorded the statements of both the parties. The respondent stated that he was also in touch with the police regarding cancellation of the FIR.

On 27.05.2008, on false assurances by respondents No.1,2 and 5 and Ram Kishan, the petitioner was pressurized into executing two affidavits relinquishing her rights in her late husband Nabheet's estate. She was asked to swear the affidavits admitting a will of her husband which was forged after his death by the accused in order to impress upon the petitioner that it was the only way out to settle all the disputes at the earliest. The petitioner in good faith signed the affidavits without reading the forged will and without reading the contents of the affidavit because the respondents had told the petitioner and her father to do so without making any changes. Respondent No.5 also informed them that a copy of the will would be supplied to the petitioner only later. Ram Kumar Kalyan and Ram Kishan assured them that they would get the FIR No. 182 cancelled and see to it that the petitioner and her minor daughter would be adequately compensated in the form of cash and kind in lieu of their share in Nabheet's property. Respondent No.5 endorsed the commitment. Respondent No.5 on his way to the Delhi Airport visited the petitioner's house on 28.05.2008 and assured the petitioner that she should have full faith in him and he would do the needful. At that time petitioner's maternal uncle Harbhajan Singh and her cousin Randeep Chauhan, an Advocate, were also present. Thereafter suspecting

mala fides, enquiries were made by the petitioner and her father. They learnt that the accused with the common object of grabbing the share of the complainant and her daughter in Nabheet's estate had prepared a bogus and forged will after the death of Nabheet alleged to have been executed on 26.03.2008. They also came to know that the will was forged by all the accused "on instructions and dictation of respondent No.5 in his office at Chandigarh and the same was typed by the junior of respondent No.5 (respondent herein) on a computer maintained in the respondent's office". The respondents and Ram Kishan used the forged Will before the Revenue Authorities and the Haryana Urban Development Authority. The petitioner also challenged the validity of the will by filing a civil suit. The respondent once again reassured the petitioner and on the basis of the false representation persuaded her to withdraw the suit and assured her that thereafter FIR No.182 would be cancelled and that the petitioner and her daughter would be adequately compensated. Apprehending the false implication of her family in a criminal case, the petitioner was again trapped on the false assurance of the respondent and others. The derogatory remarks in the Will were objected to by the petitioner and her family members. Respondent No.5 assured them that they would prepare a compromise deed in such a manner that the derogatory remarks would be severed and that the same would not be read against the petitioner and her family members. The respondent further stated that in the compromise deed he would include a clause on the basis of which Ram Kumar Kalyan and others would not be allowed to use the derogatory remarks against the petitioner and her family members at any stage in

any Court of law. The drafts of the compromise-deed were attached to the complaint. On 19.09.2008, the civil suit was accordingly withdrawn. The accused, however, backed out of the proposed terms and conditions of the compromise. The suit was, however, restored on 18.10.2008. Alongwith the complaint, the petitioner produced a report of the handwriting expert, which was prepared pursuant to the directions in the civil suit. The petitioner has been threatened by the respondents. The District & Sessions Judge, Karnal held an enquiry under the orders of this Court regarding the removal of the affidavits by accused No.1 and 2 from the police file of FIR No.182 which were found to be correct. An order of the Lok Adalat Bench, Karnal dated 18.09.2008 was referred to in support of the contention that the accused sought to take advantage of the forged Will. Despite the same the mutations were sanctioned on the basis of the forged Will. Complaints were filed before senior police officers and other higher officers but no action has been taken by them. The petitioner, therefore, prayed that all the accused including the respondent be summoned under the aforesaid provisions of the Indian Penal Code.

9. As we mentioned earlier, the other respondents have been summoned but the complaint against respondent No.5 is dismissed. It is not necessary to refer to the contents of the Will for the same in any event is alleged to be forged. Suffice it to state that the Will benefits the petitioner's in-laws. The complainant examined 17 witnesses- CW1 to CW17.

10. This petition, however, is concerned only with respondent No.5 and not the other respondents before the

learned JMIC. The other respondents have in any event been summoned. Mr. Ranbir Singh, therefore, relied upon the evidence of only the witnesses relevant to this petition.

11. Mr. Ranbir Singh firstly referred to the statement made by the petitioner's father Ranbir Singh (CW-17), who endorsed the petitioner's complaint. He stressed on the fact that he had complete faith and confidence in the respondent who was his classmate in law college and a colleague at the bar. He added that on 26.05.2008, the respondent prepared the said affidavit on the blank stamp papers by dictating the same to his junior Anil Kumar Sharma (CW13). He further stated as follows:-

".....Once again accused No.5 Rajinder Singh Cheema repeated his abovesaid assurances and ensured that he will do justice. On dated 27.05.2008 accused No.5 stated that assurance/promise will be fulfilled on the basis of abovesaid promises/assurances "and he declared that you sign wherever I suggested and you will not be cheated, if you will be deceived then I shall become your witness". In view of the given assurances we signed all those documents. We came to know later on that accused No.5 with the connivance of all the other accused Ram Kumar Kalyan, Om Lata Kalyan, Pardipt Chaudhary, Honey Chaudhary with common intention to cause wrongful loss to my daughter and grand daughter and also to grab the property of their share prepared an forged Will after the death of Nabheet Kalyan, so that accused No.1 and 2 Ram Kumar and Om Lata get wrongful gain."

".....When my daughter came to know regarding the forged will then she challenged the same in Civil Court. After that again accused No.5 assured falsely for settlement and by giving the custody of minor Ananya to my daughter Civil suit was got withdrawn from the Court with the assurance of settlement and assured that he will fulfil all the promises and assurances which he had already made. When all the accused

did not fulfilled the false assurances then my daughter filed a restoration application for the restoration of above said civil suit which is pending for adjudication"

".....Shri R.S.Cheema prepared the said affidavits and Will in his office at Chandigarh after giving the dictations to Anil Kumar Sharma, Advocate who was present in his office and got typed there. In this regard on dated 9.12.2009 and 1.1.2010 I made a telephonic conversation with abovesaid Anil Kumar Sharma regarding these documents on his telephone No.9888083086 which was recorded by me on my mobile phone.

(At this stage the conversation mentioned above was given to the Presiding Officer for listening. After listening the phone was handed over to the witness after comparison with the true translation Ex.CW17/D with the direction to produce the phone at the time of consideration)."

12. This evidence was obviously not on the basis of personal knowledge. Ranbir Singh admittedly did not himself witness the respondent in the alleged act of preparing the will himself. His deposition was only on the basis of the alleged information received by him. The source of the information is not disclosed. The time when he obtained the information is not disclosed. Before us he stated that he obtained this information from the respondent's junior Anil Kumar Sharma CW-13. Mr. Ranbir Singh stated that his entire case against the respondent having allegedly forged the will is based on the evidence of Anil Kumar Sharma CW-13. No other source has been suggested.

13. Before we refer to the evidence of CW13, it must be noted that the phone was not put to Anil Kumar Sharma CW13. Nor was a recording of the conversation on the phone put to CW13. It is equally important to note that the

evidence of CW13 only refers to a telephonic conversation between the witness and Ranbir Singh on 11.12.2009. Indeed the evidence refers to a telephonic conversation between the two even earlier. However, the transcript relied upon by the petitioner was not put to him. Even the recording of the conversation was not put to him or produced in evidence. The conversation, therefore, was not proved.

14. The main witness whose evidence was relied upon was the said Anil Kumar Sharma (CW-13), the respondent's junior. CW13 inter-alia stated that in May, 2008 the parties had come to the respondent's office a number of times and in connection with their compromise a number of documents were drafted at the instance of the respondent which included the affidavits dated 26.05.2008 of Om Lata Kalyan, Ram Kumar Kalyan and the petitioner. A settlement dated 26.05.2008 was also drafted. The settlement was drafted many times in which the 5th respondent had at his own end made additions and alterations from time to time. We will set out what follows in the statement of CW13 Anil Kumar Sharma as Mr.R.S.Rai, the learned senior counsel appearing on behalf of the respondent placed considerable reliance upon the same. It reads as under:-

".....In May, 2008, they had come to the office of Shri Rajender Singh Cheema a number of times and in connection with their compromise a number of documents were drafted at the instance of Shri Rajender Singh Cheema and which documents included affidavit dated 26.05.2008 of Smt. Om Lata Kalyan, Ram Kumar Kalyan, Renuka Kalyan. Those affidavits were drafted and settlement dated 26.05.2008 had also been drafted. This settlement was drafted many a times and in that document Shri Rajender Singh Cheema had at his own end made additions and alterations from time to time. I have seen para Nos. 3, 4

and 8 of settlement No. 3 and para No. 9 of settlement No. 4 and I have seen the additions and alterations made in the hand. These additions and alterations had been made by Shri Rajender Singh Cheema in his own hand. I have remained working with Shri Rajender Singh Cheema and I have seen him reading and writing documents and so I can identify his handwriting to a considerable extent. Settlement Deeds which were prepared from time to time are Ex. CW-13/A to Ex. CW-13/D. The affidavit which is already on the file are Ex. C2 to C-4. When I was in the office of Shri Rajender Singh Cheema and in connection with the compromise in the case and in connection with the documents Shri Ranbir Singh Advocate had been having talks with me from time to time. The talks were taking place on Tel. Ph. No. 9888083086. The Tel. No. of Shri Ranbir Singh Advocate was 9416000485 and talks had been taking place on these numbers. On 08.08.10 I had also attended the telephone of Shri Ranbir Singh when he had congratulated me in connection with new year and he had also had talk regarding the documents regarding compromise. In the same manner on 11.12.2009 I had a talk with Shri Ranbir Singh Advocate from the above noted telephone No. In the office of Shri Rajender Singh Cheema and during the time of getting the compromise arrived at between the parties, I had got prepared the documents regarding the transfer of properties and Will also. During the time I remained in the office this compromise had not been finalized.(emphasis supplied)."

We will refer to the significance of the cancellation of the word 'Will' as shown above later.

15. Both the Courts held that a prima-facie case had been made out against the other respondents but that no case had been made out against the respondent before us.

16. We entirely agree with the impugned judgments. The complaint against the respondent was liable to be dismissed for several reasons which we will now state.

17. Neither the petitioner nor her father Ranbir Singh had witnessed respondent No.5 preparing Nabheet's will.

Neither the petitioner's complaint nor the evidence of Ranbir

Singh refers to their having personal knowledge in regard thereto.

18. Having said that we will only mention here that in the appeal against conviction i.e. Criminal Appeal-D-922 of 2011 we have discussed Ranbir Singh's evidence regarding the preparation of the will. That evidence, however, is not before us in this appeal. We will presume, therefore, that we cannot read that evidence in this appeal. It may be necessary to consider in appropriate proceedings and at the appropriate stage whether Ranbir Singh admitted knowledge of the preparation of the Will and had agreed to the same and if so the effect thereof upon the rights of the parties.

19. Neither the petitioner in her complaint nor Ranbir Singh in his preliminary evidence gave particulars by whom and when they were informed that a Will had been forged and that the respondent was involved in the same. Surely this was an important fact which ought to have been stated clearly both in the complaint filed by the petitioner and in the evidence of Ranbir Singh. Ranbir Singh's as mentioned earlier, is an Advocate of about 30 years standing.

20. Faced with this Ranbir Singh submitted across the bar that he had been informed by the respondent's junior CW13 Anil Kumar Sharma that the respondent had played a role in forging the Will. This was not stated either in the complaint or in Ranbir Singh's evidence. Ranbir Singh, however, contends that this is evident from the transcript of the telephonic conversation between CW13 and himself. He relied upon a transcript which is referred to in the evidence.

21. It is important to consider the evidence of CW13, the material part whereof we have set out earlier. CW13

stated that the parties had come to the respondent's office a number of times and that in connection with their compromise a number of documents were drafted at the instance of the respondent which included the affidavit and the draft of the settlement-deed. He specifically stated that paragraphs-3, 4 and 5 of settlement No.3 and paragraph-9 of settlement No.4 contained alterations made by the respondent in his own hand. His further evidence also refers to the affidavits and the settlement deeds. What is important is that there is not a whisper about a Will having been drafted. There is not even a whisper to the effect that the respondent was involved in the preparation of any Will.

The last but once sentence of his evidence is of greater importance. It reads as follows:-

".....In the office of Shri Rajender Singh Cheema and during the time of getting the compromise arrived at between the parties, I had got prepared the documents regarding the transfer of properties and Will also. During the time I remained in the office this compromise had not been finalized."..... (emphasis supplied).

The word 'Will' is deleted in the evidence by a line across it. The original evidence in Hindi is even more telling. It reads as follows:-

".....श्री र.चीमा के दफ्तर में उक्त राजीनामा में करवाने के दौरान properties के transfer बारे में वसीयत के बारे में भी दस्तावेज बनवाये. यह राजीनामा मेरे ऑफिस में रहते हुये न चढ़ा.

R.O.&AC.

Sd/- Anil Kumar

2/12/2010

Sd/-Mahesh Kumar,

Judicial Magistrate 1st Class,

Kamal 2.12.10"

It would be noticed that the word 'transfer' and the words 'Vasiyat ke bare mein' (in respect of the will) are deleted. Therefore not only is there not a whisper of the

respondent having either prepared or been involved in any manner whatsoever in the preparation of a forged Will but on the contrary the reference to a 'Will' was consciously deleted. Not only is there no evidence regarding the respondent's involvement in the preparation of the allegedly forged Will, there is not even a reference to a Will. Further still the reference to the Will was deleted by the Court.

22. Faced with this Mr.Ranbir Singh contended that the deletion of the word 'Will' was a result of the respondents including respondent No.5 tampering with the evidence of the Court.

23. This is a serious allegation. The serious allegation is in respect of not merely an important aspect of the case but a crucial aspect of the case. At the cost of repetition Ranbir Singh is an Advocate of 30 years standing.

There was admittedly no application made to the Court to correct the evidence. There is nothing by on behalf of the petitioner or CW13 or Ranbir Singh or any other party contending that the deletion in the evidence was incorrect. This appeal and the connected appeals have been heard by us over several days. Even as on date there was no application to have that part of the verification statement corrected. In these circumstances, we cannot accept the allegation that the evidence was tampered with. We must read the evidence as it stands in the courts record.

24. That the allegation regarding tampering with the Courts record is an after thought is also clear from Criminal Revision No. 199 of 2011 filed by the petitioner against the respondent before the Court of learned Additional Sessions Judge, Karnal. There is not a whisper in the Revision

Petition to the effect that the evidence of CW13 was tampered with by making a deletion in the last but one sentence especially of the word 'Will'. Even if the contention had been raised before the learned Additional Sessions Judge during the course of Criminal Revision No. 199 of 2011 and an allegation had been made in the revision application itself, it would not have made a difference for an application for correction ought to have been made to the learned Judge who recorded the evidence. From the impugned judgment of the learned Additional Sessions Judge in Criminal Revision No. 199 of 2011 the contention does not appear to have been raised during the arguments either.

25. The learned Additional Sessions Judge rightly observed that in the evidence of CW13 he had not mentioned a single word to the effect that a forged Will was typed by him on the instructions of the respondent on the computer installed in the respondent's office. He further rightly held that the telephonic conversation was not even put to CW13 when he appeared for the preliminary evidence.

26. In the circumstances based on the evidence of CW13, the respondent could never have been summoned.

27. Mr. Ranbir Singh then stated that the Court must presume that the respondent was involved in the preparation of the Will as he had informed Ranbir Singh that he would prepare all the important documents in connection with the settlement and a will is an important document. The Court is not entitled to speculate in such a manner. It was for the petitioner to produce evidence to satisfy the Court even prima-facie that the respondent was involved in forging the will.

28. Mr. Ranbir Singh, however, submitted that he had produced the mobile phone before the learned Judge but that he had been ordered to produce the same at the time of consideration for summoning the accused. However, an application for placing on record the mobile phone was made only after the impugned order. The application is pending but we were requested by the petitioner to proceed with the matter nevertheless. The effect of the result of that application is kept open.

29. Mr. Ranbir Singh also relied upon the evidence of the petitioner's maternal uncle CW2. He, however, has not stated anything about the 'Will' on the basis of any personal knowledge.

30. The learned Judge also rightly analysed the preliminary evidence of CW16 Ashwani Kumar, the owner of the STD shop, who operated the photocopying machine. His evidence does not indicate anything about the forged Will. It only refers to the affidavits and the settlement deeds. We are entirely in agreement with the learned Judge, therefore, that there is not an iota of evidence which show any involvement on the part of respondent No.5 in forging the Will.

31. Mr. Ranbir Singh submitted that whatever be the state of the value of the evidence it is immaterial at the stage of summoning the accused persons. He submitted that these aspects are irrelevant at this stage. In support of his contention he relied upon three judgments of the Supreme Court. In our view the submission put as broadly as it has been and in such absolute terms is not well founded.

32. Mr. Ranbir Singh firstly relied upon the following observations of the Supreme Court in *Dy. Chief Controller of Imports and Exports v. Roshanlal Agarwal and others* 2003(4) SCC 139:-

"9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry".....(emphasis supplied).

We did not understand Mr. Rai as contending otherwise. He rightly contended that this was a case of no evidence at all. He also contended that the evidence that was relied upon did not make out even a mild prima-facie case of the allegations contained in the complaint but infact militated against the complainant. For instance, the main witness that was relied upon was CW13. However, as we noted earlier, not only did his evidence not referred to any will but the reference to the will in the deposition was consciously deleted. As we also noted earlier, neither the complaint nor the evidence of Ranbir Singh suggest that they were personally aware of respondent No.5 having played a role in allegedly fabricating the will. The complainant obtained the information from her father Ranbir Singh and Ranbir Singh in turn alleged to have obtained information from CW13. Neither the recording nor the transcript were brought on record.

33. Mr. Ranbir Singh then relied upon the following observations of the Supreme Court in *Shivjee Singh v. Nagendra Tiwary and others* 2010(7) SCC 578:-

19. In *Chandra Deo Singh v. Prokash Chandra Bose* [AIR 1963 SC 1430 : (1963) 2 Cri LJ 397 : (1964) 1 SCR 639] , it was held that where there was prima facie evidence, the Magistrate was bound to issue process and even though the

person charged of an offence in the complaint might have a defence, the matter has to be left to be decided by an appropriate forum at an appropriate stage. It was further held that the issue of process can be refused only when the Magistrate finds that the evidence led by the complainant is self-contradictory or intrinsically untrustworthy.

20. In *Kewal Krishan v. Suraj Bhan* [1980 Supp SCC 499 : 1981 SCC (Cri) 438] , this Court examined the scheme of Sections 200 to 204 and held: (SCC p. 503, para 10)

"10. ... At the stage of Sections 203 and 204 of the Criminal Procedure Code in a case exclusively triable by the Court of Session, all that the Magistrate has to do is to see whether on a cursory perusal of the complaint and the evidence recorded during the preliminary inquiry under Sections 200 and 202 of the Criminal Procedure Code, there is prima facie evidence in support of the charge levelled against the accused. All that he has to see is whether or not there is 'sufficient ground for proceeding' against the accused. At this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial court. The standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing charges."

21. The aforesaid view was reiterated in *Mohinder Singh v. Gulwant Singh* [(1992) 2 SCC 213 : 1992 SCC (Cri) 361] in the following words: (SCC p. 217, para 11)

"11. ... The scope of enquiry under Section 202 is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But the enquiry at that stage does not partake the character of a full-dress trial which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused person. Further, *the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section 202 of the Code.* To say in other words, during the course of the enquiry under Section 202 of the Code, the enquiry officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry." (emphasis supplied)

For the same reasons, this judgment is of no assistance to the petitioner. We have applied the same test. Mr. Rai did not invite us to apply any other test either. For the reasons we have already stated we find no infirmity in

the judgment of the trial Court as there is no prima-facie evidence. Our decision is not based on any defence that has been raised by respondent No.5. Our decision is based on the fact that there is a complete absence of evidence. We, therefore, do not consider there being sufficient grounds for proceeding against the respondent.

34. Mr. Ranbir Singh lastly relied upon the following observations of the Supreme Court in *Sonu Gupta v. Deepak Gupta and others 2015(3) SCC 424:-*

"8. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.

9. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of the charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial." (emphasis supplied).

For the reasons we have already stated in respect of the other two judgments of the Supreme Court, this judgment is of no assistance to the petitioner either.

35. The proposition as submitted by Mr.Ranbir Singh is far too wide and in absolute terms. It would require the Court to set into motion the criminal law as a matter of course irrespective of the nature of the complaint or the substance contained therein.

36. Mr.Rai's reliance on the following judgments of the Supreme Court in this regard is well founded.

In *Pepsi Foods Ltd. and another v. Special Judicial Magistrate and others* (1998) 5 Supreme Court Cases 749, the Supreme Court observed:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."
.....(emphasis supplied).

Thus summoning of an accused in a criminal case is not a matter of course. The court must examine whether a prima-facie case of an offence having been committed has been made out or not. A similar view was also taken by the Supreme Court in *Mehmood Ul Rehman v. Khazir Mohammad Tunda and others* (2015) 12 Supreme Court Cases 420.

37. Moreover, we must remember that the order passed by the learned Additional Sessions Judge was in his revisional jurisdiction and not in appellate jurisdiction.

The reasons furnished by the learned Judge are sufficient and cannot be said to be unreasonable or unsustainable. Nor can the reasons furnished by the learned Judicial Magistrate Ist Class be said to be unreasonable or unsustainable. The learned Additional Sessions Judge, therefore, rightly exercised his revisional jurisdiction. In *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke and others* (2015) 3 Supreme Court Cases 123, the Supreme Court held:-

"14. In the case before us, the learned Magistrate went through the entire records of the case, not limiting to the report filed by the police and has passed a reasoned order holding that it is not a fit case to take cognizance for the purpose of issuing process to the appellant. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction."emphasis supplied.

The impugned judgment, therefore, warrants no interference. In any event, we are of the same view.

38. In this view of the matter it is not necessary to consider the other submissions made by Mr. Rai, learned senior counsel appearing on behalf of the respondent.

39. We hasten to add that these proceedings do not conclude the parties in any other proceedings that they have adopted or may hereafter adopt in respect of the 'Will' in a Civil Court. Those proceedings will be decided on their own merits. The petitioner not having produced the necessary

evidence in these proceedings will not be precluded from producing the same before the Civil Court. We make it expressly clear that the Civil Court will decide the proceedings or issues in relation to the said Will entirely on their own merits. The petitioner shall also not be precluded from proving the alleged conversation between CW13 and Ranbir Singh in such proceedings or at the trial of the other respondents in any manner.

40. The petition is, therefore, dismissed but subject to what we have stated above.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(A.B. CHAUDHARI)
JUDGE

7th March, 2017
ravinder sharma

NOTE:

Whether speaking/non-speaking: Speaking✓
Whether reportable: Yes✓