

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment delivered on: 21st September, 2017**

1. CRL.M.C. 3499/2013 & CRL.M.A.12831/2013

SMT SHALINI DHINGRA Petitioner

Through: Mr. P. P. Khurana, Sr. Adv. with
Mr. Sachin Sood, Adv.

versus

STATE Respondent No.1

R. VIJAYNANDAN REDDY Respondent No.2

Through: Mr. Izhar Ahmad, APP for State
Mr. Anoop George Chaudhary, Sr.
Adv. Ms. June Chaudhary, Sr. Adv.
with Mr. M. Tarique Siddiqui,
Mr. Tanveer Ahmad and
Ms. Reetika Gupta, Adv. for R-2.

2. CRL.M.C. 3911/2014 & CRL.M.A.13376/2014, 171/2016

RAMA DEVI Petitioner No.1

KRISHNA PRIYA Petitioner No.2

Through: Mr. Dayan Krishnan, Sr. Adv. with
Mr. Ranjeet Singh, Mr. P. Srinivas
Kumar and Ms. Joolie Kataria, Adv.

versus

STATE Respondent No.1

R. VIJAYNANDAN REDDY

..... Respondent No.2

Through: Mr. Izhar Ahmad, APP for State
Mr. Anoop George Chaudhary, Sr.
Adv. Ms. June Chaudhary, Sr. Adv.
with Mr. M. Tarique Siddiqui,
Mr. Tanveer Ahmad and
Ms. Reetika Gupta, Adv. for R-2.

3. CRL.M.C. 4994/2014 & CRL.M.A.17111/2014

PARDEEP DHINGRA

..... Petitioner

Through: Mr. Vikas Pahwa, Sr. Adv. with
Mr. Karan Khanuja and
Ms. Astha Sharma, Adv.

versus

STATE (NCT OF DELHI)

..... Respondent No.1

R. VIJAYNANDAN REDDY

..... Respondent No.2

Through: Mr. Izhar Ahmad, APP for State
Mr. Anoop George Chaudhary, Sr.
Adv. Ms. June Chaudhary, Sr. Adv.
with Mr. M. Tarique Siddiqui,
Mr. Tanveer Ahmad and
Ms. Reetika Gupta, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE I. S. MEHTA

JUDGMENT

I. S. MEHTA, J.

1. By virtue of the above three captioned petitions, the petitioners invoke the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 read with Article 226 of Constitution of India, 1950 to quash the summoning order dated 1st April, 2013 passed against the petitioners by Metropolitan Magistrate, Saket District Courts in Criminal Complaint No. 547/2/12.
2. The factual matrix of the case is that, the respondent no.2 –R. Vijaynandan Reddy filed a criminal complaint against the four petitioners herein namely
 - a. Rama Devi (accused no.1),
 - b. Krishna Priya (accused no.2),
 - c. Pradeep Dhingra (accused no.3) and
 - d. Shalini Dhingra (accused no.4)under Section 200 Cr.P.C. before Chief Metropolitan Magistrate, Saket on 15.02.2012 alleging that Rama Devi in connivance with Smt. Shalini Dhingra forged a Will dated 14.02.1998 and sold the property bearing no.C-72, Freedom Fighters Cultural Centre, at Neb Sarai, Saket, New Delhi measuring 400 square yards (*hereinafter referred to as the 'said property'*) .
3. As per the complaint, the said property was jointly owned by the respondent no.2- R. Vijaynandan Reddy, an advocate and his late grandfather Shri. R. Venkata Reddy, who was a freedom fighter. The father of the respondent no.2 Shri. R. Venugopal Reddy raised a house on the said plot. It is alleged in the complaint that Rama Devi

petitioner/accused no.1 had illicit relations with the father of the respondent no.2 and Krishna Priya petitioner/accused no.2 is the daughter of Rama Devi petitioner/accused no.1. The said property was allotted to the respondent no.2/complainant on 21.12.1986. On 18.08.1995, the respondent no.2/complainant's father Shri R. Venugopal Reddy made a will bequeathing all his property including the said property in the name of respondent no.2/complainant. On 24.03.1999, a notice under section 126 of Delhi Municipal Corporation Act, 1957 was issued by the Municipal Corporation of Delhi in the name of respondent no.2 and his grandfather.

4. It is further alleged that the petitioner/accused no.1 Rama Devi claims herself to be the wife of father of respondent no.2 and she illegally occupied the said property. After the death of the father of respondent no.2 i.e. Shri R. Venugopal Reddy on 15.08.2002, when respondent no.2 visited the property in September 2002, he found Smt. Rita Sachdeva was staying as a tenant of petitioner/accused no.3 Pradeep Dhingra. Accused no.3 Pradeep Dhingra claims to have purchased the said property from accused no.1 and 2 namely Rama Devi and Krishna Priya.
5. It is alleged in the complaint that, Rama Devi and her daughter Krishna Priya (accused no. 1 and 2) made a fabricated Will dated 14.02.1998 purported to be executed by the father of respondent no.2 i.e. Shri R. Venugopal Reddy in favour of Rama Devi and Krishna Priya. Thereafter, on the basis of the forged Will dated 14.02.1998, accused no.1 and no.2 i.e. Rama Devi and Krishna Priya sold the said property to Pradeep Dhingra and Shalini Dhingra (accused no. 3 and

4) through Will, General Power of Attorney, Special Power of Attorney all executed on 25.01.2003. In addition to that, they also entered into an agreement to sell with accused no.3 and 4 i.e. Pradeep Dhingra and Shalini Dhingra on 29.01.2003.

6. It is stated in the complaint that the respondent no.2 obtained a letter of administration no. C.A. 48 of 2003, dated 04.08.2003 from High Court of Andhra Pradesh to administer and to receive the assets/amount left in the account of Late R. Venugopal Reddy within the state of Andhra Pradesh, i.e. Rs.54,991/- being the Bank Deposit and Income Tax Refund amount. This letter of administration was granted only in favour of the respondent no.2/complainant. The respondent no.2 had lodged complaint on 05.06.2003 with SHO, P.S. Mehrauli. The respondent no.2 issued a legal notice on 05.05.2005 to Pradeep Dhingra. Reply to the legal notice was sent on 14.05.2005, thereby informing the factum of purchase of the suit property by Pradeep Dhingra and Shalini Dhingra.

7. Thereafter, the respondent no.2 in the year 2006 filed a Civil Suit bearing CS (OS) No. 239/2006 in High Court of Delhi seeking relief that all documents executed by petitioners Rama Devi and Krishna Priya in favour of petitioner Pradeep Kumar Dhingra be declared null and void with the relief of possession along with damages and mesne profits.

8. It is the case of the respondent no.2 that it was only after the filing of the Written Statement by petitioners/defendant in CS (OS) No.239/2006, the respondent no.2/complainant came to know about the forged Will dated 14.02.1998 allegedly written by his father, in

favour of Rama Devi and Krishna Priya (accused no.1 and 2) in connivance and in collusion with Pradeep Dhingra and Shalini Dhingra (accused no.3 and 4), on the basis of which the said suit property was allegedly sold by accused no.1 Rama Devi to accused no.3 and 4 i.e. Pradeep Dhingra and Shalini Dhingra.

9. On 09.09.2010, the said suit was dismissed by the Single Judge under Order VII Rule 11 CPC. However, the said Civil Suit of the respondent no.2 was restored vide order dated 03.01.2013 in Regular First Appeal (OS) 121/2010 by the Division Bench of High Court of Delhi. The Civil Suit of the respondent no.2 was transferred to District Court (Saket), Delhi vide order dated 27.01.2016 passed by the Joint Registrar (Judicial), Delhi High Court as the suit property was valued at less than two crores. The suit is currently pending in the District Court (Saket).
10. On 15.02.2012 the respondent no.2 herein filed a criminal complaint against Rama Devi, Krishna Priya, Pradeep Dhingra and Shalini Dhingra under Section 200 Cr.P.C. before the Chief Metropolitan Magistrate, Saket.
11. On 01.04.2013, the learned Metropolitan Magistrate took cognizance against all the four accused persons i.e. Rama Devi (accused no.1), Krishna Priya (accused no.2), Pradeep Dhingra (accused no.3) and Shalini Dhingra (accused no.4) for commission of offences under Sections 467/468/471/120-B IPC and issued summons.
12. Against the said summoning order dated 01.04.2013 passed by the learned Metropolitan Magistrate, all the four accused persons i.e.

Smt. Shalini Dhingra filed Crl. M.C. 3499/2013, Rama Devi and Krishna Priya jointly filed Crl. M.C. 3911/2014 and Pradeep Dhingra filed Crl. M.C. 4994/2014 assailing the said summoning order before this Court under Section 482 Cr.P.C. read with Article 226 of Constitution of India for quashing of the complaint no. 547/2/12 and also the summoning order dated 01.04.2013.

Hence the present three petitions.

13. The learned senior counsel Mr.P.P.Khurana appearing on behalf of the petitioner Smt. Shalini Dhingra in CRL.M.C. 3499/2013 has submitted that the petitioner Smt. Shalini Dhingra along with her husband Pradeep Dhingra purchased the property from Smt. Rama Devi and is a bona fide purchaser of the said property. The said property was purchased in the year 2003. The respondent no.2/complainant Vijaynandan Reddy filed a Civil Suit bearing CS (OS) No. 239/2006 subsequently after a gap of three years and prayed for a decree for declaring all the documents executed by Mrs. Rama Devi and her daughter Ms. Krishna Priya as null and void and a decree for possession of the suit premises in favour of respondent no.2 along with damages and mesne profits amounting to Rs. 11,50,000/- from the date of filing of the suit and future damages/mesne profit @ Rs. 50,000/- per annum till vacant possession of the suit premises is given. The said prayer in the said suit has been rejected by this Court by an order passed by Hon'ble Mr. Justice V.K. Shali dated 09.09.2010. The said suit has been rejected under Order VII Rule 11 (a) CPC for want of cause of action

resulting into and not affected by *res judicata* as nothing has been determined.

14. The learned senior counsel has further submitted that this Court has given sufficient opportunity to produce the documents in support of his title but despite giving of opportunity he failed to produce the same and the property in which the suit has been filed is a society property and he could have produced the document of its registration or its membership issued by the society to show that he possesses right, title and interest in the said property.

15. The learned senior counsel has further submitted that the respondent no.2/complainant- Vijaynandan Reddy was given a last opportunity to file documents despite that the respondent no.2/complainant- Vijaynandan Reddy failed to produce any document. When the respondent no.2/complainant ultimately failed to produce any documents despite been given several opportunities, this Court vide order dated 14.12.2006 ordered for recording the statement of respondent no.2 under Order 10 Rule 2 of Civil Procedure Code. The statement of respondent no.2 was recorded by this Court on 23.07.2007. The learned senior counsel has further submitted that the statement recorded on 23.07.2007 (Annexure P-15) *ipso facto* shows that Mr. R. Vijaynandan Reddy does not possess any title document of the suit property, which is reproduced herein:

Annexure P-15

CS(OS) No.239/2006
Dated: 23rd July, 2007

**STATEMENT OF MR. R. VIYANANDAN REDDY S/O
ENUGOPAL REDDY R/O 2-2-12/A, D.D. COLONY,
HYDERABAD-500 007 ON S.A.**

*“.....Other than the documents already filed
by me on record, I am possessed of no other
documents to show my title in respect of the
suit property.”*

16. The learned senior counsel further submitted that on the basis of the said document, this Court rejected the plaint vide order dated 09.09.2010 and held that plaint is without any cause of action. He has further submitted that the respondent no.2/complainant filed a Regular First Appeal (OS) 121/2010 against the impugned order dated 09.09.2010 before the Division Bench of this Court and the said appeal was dismissed for non-prosecution vide order dated 10.07.2012. However, the said appeal was restored to its original number vide order dated 03.01.2013 by the Division Bench and the impugned order was set aside and the matter was remanded back to the civil court where the said suit is still pending in the same status and even the issues have not been framed in the said suit.
17. The learned senior counsel for the petitioner further submitted that however, a complaint has been filed in the year 2012 after nine years under Section 200 Cr.P.C. alleging commission of offences under Sections 467/468/471/465/120-B IPC. The learned senior counsel pointed out that once a statement under Order 10 Rule 2 CPC recorded by this Court is present and the respondent no.2/complainant has failed to file any document or complied with the provisions and his own admission that he does not possess any

documents shows that the complaint itself is without any cause of action, is an after-thought moreover it is a perverse complaint and the impugned order passed by the learned Metropolitan Magistrate may be quashed. He further submitted that the learned Metropolitan Magistrate while passing the impugned summoning order has not applied his mind in the proper way and has relied upon the following judgments in support of his arguments:-

- i. ***Zandhu Pharmaceuticals Works Ltd. & Others v. Mohd. Sharaful Haque & Anr., (2005) 1 SCC 122.***
- ii. ***Sardool Singh & Anr. v. Smt. Nasib Kaur, 1987 (Supp) SCC 146.***
- iii. ***G. Sagar Suri & Anr. v. State of U.P. & Ors., JT 2000 (1) SC 360.***
- iv. ***Pepsi Foods Ltd. v. Special Judicial Magistrate & Ors., AIR 1998 SC 128.***
- v. ***Madhavrao Jiwajirao Scindia & Ors. v. Sambhajirao Chanrajirao Angre & Ors. (1998) 1 SCC 692.***
- vi. ***Indian Oil Corpn. v. NEPC India Ltd. & Ors., (2006) 6 SCC 736.***
- vii. ***Hiralal & Ors. v. State of U.P. & Ors., AIR 2009 SC 2380.***
- viii. ***Kishan Singh (D) through L.Rs. v. Gurpal Singh & Ors., AIR 2010 SC 3624.***

- ix. ***Dhannulal & Ors. v. Ganeshram & Anr., 2015 (4) SCALE 613.***
- x. ***Rajiv Thapar & Ors. v. Madan Lal Kapoor, 2013 3 SCC 330.***
- xi. ***Mohd. Ibrahim & Ors. v. State of Bihar, (2009) 8 SCC 751.***
- xii. ***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335.***
- xiii. ***Priya Varat Singh v. Shayam Sahay, 2008 (8) SCC 232.***
- xiv. ***Suresh v. Mahadevappa Shivappa Danananna, 2005 (3) SCC 670.***

18. Per contra, the learned senior counsel appearing on behalf of the respondent no.2/complainant has submitted that the impugned order dated 01.04.2013 suffers from no infirmity and does not call for any interference. He has laid emphasis on the fact that while dealing with the complaint under Section 200 Cr.P.C. only the allegations made in the complaint have to be seen and interference is called for by this Court only in a situation where a bare reading of the complaint does not make out an offence.

19. The learned senior counsel has further submitted that in the instant petition the complaint relates to a property situated at plot No.72 C Block, of 400 sq. yards in Freedom Fighters Cultural Centre, Neb Sarai allotted to Mr. R. Venkata Reddy- the grandfather of the respondent no.2/complainant- Mr. R. Vijayanandan Reddy. He

has further submitted that Mr. R. Venkata Reddy was a freedom fighter and the grandfather of the respondent no.2/complainant and R. Venugopal Reddy is the son of R. Venkata Reddy. In the present petition, Mr. R. Venkata Reddy freedom fighter is no more and his son Mr. R. Venugopal Reddy is also no more and his son Mr. R. Vijaynandan Reddy is alive and is pursuing the complaint. He has further submitted that the plot in question which was allotted at the time of grandfather R. Venkata Reddy was in the joint name of R. Venkata Reddy and the respondent no.2/complainant Vijayanandan Reddy.

20. The learned senior counsel for the respondent no.2 has further submitted that when the respondent no.2/complainant came from Andhra Pradesh to Delhi he came to know that the property in question was occupied by accused No.1 & 2 i.e. Rama Devi and Krishna Priya through accused No.3 & 4 Pradeep Dhingra and Shalini Dhingra.
21. He has further submitted that Rama Devi though factually incorrect however, claims to be the wife of R. Venugopal Reddy late father of the respondent no.2/complainant and it is because of this reason the respondent no.2/complainant filed a Civil Suit No.239/2006 for recovery of possession *qua* the accused persons. The defence taken by the accused persons in the said Civil Suit after the filing of the Written Statement revealed that the property in hand of Rama Devi came to her through a forged Will to which the original till date has neither been filed nor traced out. The alleged

Will is dated 14.02.1998 and no probate petition has been filed till date nor exhibited.

22. He has further submitted that when this fact came in his personal knowledge, the respondent no.2/complainant sent the alleged Will for opinion of the handwriting expert and disputes the very existence of the alleged Will and validity of the execution of the said Will.
23. The learned senior counsel for respondent no.2 has further submitted that the said Civil Suit filed by the respondent no.2/complainant is still pending before the District Court, Saket, New Delhi. The learned senior counsel has submitted that the Civil Suit was filed on 03.02.2006 and the present criminal complaint was filed on 15.02.2012 after almost 5 years after receiving the opinion of handwriting expert.
24. The learned senior counsel for the respondent no.2 further submitted that the possession of the property in question has been handed over to accused No.3 & 4 Pradeep Dhingra and Shalini Dhingra under an agreement to sell for Rs.10 Lakhs whereas the property is worth Crores. He has further submitted that the petitioner by entering into the agreement to sell, the colour of the title has come down into a cloud, therefore, it is the respondent no.2/complainant who has to take back the possession of the aforesaid property for which he has already filed a Civil Suit which is pending and when the respondent no.2/complainant came to know that the crores of property has been transferred under the garb of the agreement to sell, the same has been done through criminal conspiracy.

25. The learned senior counsel appearing on behalf of respondent no.2 has further submitted that during the existence of the Civil Suit, the criminal case too is maintainable and relied upon the judgment of the Apex Court in ***Taramani Parakh vs. State of M.P. & Ors., 2015 CrL.LJ 2031*** (para 27.11.) He has further submitted that the instant petition pertains to a criminal conspiracy alleged to have been committed by the petitioners/accused persons and therefore invocation under Section 482 Cr.PC is not permissible and submits that the present petitions be dismissed. The learned senior counsel for the respondent no.2 in support of his submissions has relied upon the following judgments:-

- i. ***State of Haryana & Ors. vs. Ch. Bhajan Lal & Ors., AIR 1992 SC 604.***
- ii. ***Ravinder Kumar Madanlal Goenka & Anr. vs. Rugmini Ram Raghav Spinners Pvt. Ltd.,(2009) (11) SCC 529.***
- iii. ***Taramani Parakh vs. State of M.P. & Ors., 2015 CrL.L.J. 2031.***

26. I have given my thoughtful consideration to the submissions made by learned counsel for both the parties and have also perused the material on record.

27. The whole dispute in these three petitions, hinges around whether in presence of the Will being sub judice, the institution of criminal prosecution is proper?

The answer is NO.

28. The word ‘Will’ as per the Oxford English Dictionary Volume 2 is defined as:

“A person’s formal declaration as to the disposal of his or her property after death, having or intended to have legal force and usu. made in writing, to be signed and witnessed; the document in which this declaration of intention is expressed.”

As per Black’s Law Dictionary, Ninth Edition, the term ‘Will’ has been defined as:

“The legal expression of an individual’s wishes about the disposition of his or her property after death; esp., a document by which a person directs his or her estate to be distributed upon death.”

As per Halsbury’s Laws of England, Fourth Edition, the term ‘Will’ has been defined as:

“ A will or testament is the declaration in a prescribed manner of the intention of the person making it with regard to matters which he wishes to take effect on or after his death. The word ‘will’, although commonly used to describe one of a series of instruments expressing testamentary intentions, denotes the aggregate formal expression of such intentions of the testator existing at his death. However, although all wills and codicils subsisting at the testator’s death are construed together as one testamentary disposition, they are not construed as one document.”

29. In totality, the 'Will' in law is a formal declaration document usually in the form of executed document, of a person's wishes regarding the disposal of his or her property on his or her death. Such a document is a valid document if it meets the formalities of law, which generally requires the signature of testator, witnessed by two witnesses and thereafter witnessed by the scribe. The 'Will' so documented in presence of aforesaid witnesses should indicate the sound and disposing state of mind to indicate that the testator understood the nature and effect of disposition of the property at his conscious and free will. The onus of proving the 'Will' always remains on the propounder. At the same time, it may be considered invalid if, among other instances the testator was mentally incapable of disposing of his or her, if it imposes unreasonable or cruel demands as a condition of inheritance or if the testator did not have clear title to bequeath assets. Any party who contests a Will must bring the claim within a time specified by statute and must bear the burden of proof in demonstrating that the Will is faulty either on the legal capacity or of unsoundness of testator.

30. In the instant petition, the respondent no.2/complainant- Mr. R. Vijaynandan Reddy, filed a criminal complaint under Section 200 Cr.P.C. for commission of offences under Sections 405, 420, 464, 465, 467, 468, 469, 471, 120-B & 34 of IPC by the present petitioners namely:

- a. Rama Devi (accused no.1),
- b. Krishna Priya (accused no.2),
- c. Pradeep Dhingra (accused no.3) and

d. Shalini Dhingra (accused no.4)

31. The respondent no.2/complainant in its complaint has specifically stated that Shri. R. Venkata Reddy was a freedom fighter and he was allotted a plot of land bearing No. C-72, Freedom Fighter Cultural Centre, at Neb Sarai, Saket, New Delhi and measuring about four hundred (400) square yards in total. Shri. R. Venkata Reddy was succeeded by his son Shri. R. Venugopal Reddy on his death and respondent no.2/complainant succeeded the property in dispute vide a Will dated 18.08.1995 and his father R. Venugopal Reddy died on 15.08.2002.
32. The respondent no.2/complainant further alleges that after the death of his father, he visited the property where he found one Smt. Rita Sachdeva, occupying the premises and claiming to be a tenant of petitioner- Pradeep Dhingra (accused no.3) and on inquiry, Pradeep Dhingra told the respondent no.2/complainant that the said property was purchased by him from accused no.1 and 2 i.e. Rama Devi and Krishna Priya. The respondent no.2- R. Vijaynandan Reddy has alleged in paragraph j. of his complaint that he came to know petitioners/accused persons i.e. Rama Devi, Krishna Priya, Pradeep Dhingra and Shalini Dhingra have fabricated the alleged Will.
33. It is in paragraph k. of the complaint, the respondent no.2/complainant himself alleges the existence of one another Will dated 14.02.1998 to be a manipulated one and not a genuine Will. Thereafter, the respondent no.2 issued a legal notice to all the accused persons on 05.05.2005 for handing over the vacant

possession of the property in question and claimed to have committed the offences punishable under Sections 405, 420, 464, 465, 467, 468, 469, 471, 120-B & 34 of IPC.

34. It is also, an admitted fact emerging on record, that the respondent no.2- Mr. R. Vijaynandan Reddy has filed a Suit for declaring all the documents executed by Mrs. Rama Devi and her daughter Ms. Krishna Priya as null and void and for declaration, recovery of possession and for recovery of damages for use and occupation of the property in question i.e. C-72, Freedom Fighter Cultural Centre, at Neb Sarai, Saket, New Delhi on 03.02.2006 (Annexure- P10) *qua* Pradeep Kumar Dhingra (defendant no.1), Rama Devi (defendant no.2) and Krishna (defendant no.3) in this Court and the said Suit is currently pending adjudication before District Court (Saket).

35. As per the respondent no.2/complainant- R.Vijaynandan Reddy, he himself admits in the complaint that there are two Wills. The Will dated 18.08.1995 has been executed by his father in his favour and the said Will is a genuine Will. The Will dated 18.08.1995, talks about Krishna Priya to be the daughter of Late R. Venugopal Reddy and puts the obligation on the present respondent no.2/complainant to perform the marriage of Krishna Priya/petitioner herein.

36. The respondent no.2/complainant instead of coming with clean hands by making Krishna Priya a necessary party in the Letter of Administration No. C.A. 48 of 2003 dated 04.08.2003, he comes up with the allegation of commission of offences punishable under

Sections 405, 420, 464, 465, 467, 468, 469, 471, 120-B & 34 of IPC against the petitioner Krishna Priya/accused no.2.

37. Since, it is an admitted fact, emerging on record that the civil dispute pertaining to the plot in question i.e. C-72, Freedom Fighter Cultural Centre, at Neb Sarai, Saket, New Delhi is pending before the District Court (Saket), wherein the genuineness of the two Wills is yet to be determined, the question of fabrication of the Will dated 18.08.1995 by the petitioners is uncalled for, as both the Wills are yet to undergo the test of proof of execution of the Will, as per the mandate of Section 68 of the Indian Evidence Act, 1872.

38. Therefore, the present dispute is purely civil in nature between the parties, wherein genuineness of the Will is *sub judice* before the competent court of its jurisdiction and initiation of criminal prosecution is unwarranted. Reliance is placed on ***Sardool Singh & Anr. v. Smt. Nasib Kaur, 1987 (Supp) SCC 146***, wherein the Hon'ble Supreme Court has held that:

“When the question regarding validity of Will is sub judice, criminal prosecution on the allegation of the Will being a forged one cannot be instituted”

39. The contention of the learned senior counsel for the respondent no.2 loses significance as the genuineness of the Will is yet to be determined and the judgments relied upon by him is inapplicable in the present facts and circumstances.

40. Consequently, the impugned summoning order dated 01.04.2013 passed by the learned Metropolitan Magistrate is set aside and all the three petitions are allowed and disposed of in the above terms.

41. Let one copy of this judgment be sent to the concerned Court and one copy of this judgment be placed on the files of Crl.M.C. 3911/2014 and Crl.M.C. 4994/2014.

No order as to costs.

I.S.MEHTA, J

SEPTEMBER 21, 2017



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