IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.876 OF 2015
(SOMPRAKASH KESHARDEO MURARKA & OTH...VS.. STATE OF MAH. & ANR.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri S.V.Sirpurkar, Advocate for Applicant.
Shri B.M.Lonare, A.P.P. for Non-applicant No.1.
Shri R.L. Khapre, Advocate for Non-applicant No.2.

CORAM : Z.A.HAQ, J.
DATED : DECEMBER 19, 2018.

Heard.

By this application under Section 482 of the Code of Criminal Procedure, the accused have challenged the order dated 18th March 2011 passed by the learned Magistrate directing registration of criminal case against them for the offences punishable under Sections 406, 418, 420, 465 and 34 of the Indian Penal Code, and also the judgment passed by the Sessions Court in Criminal Revision Application No. 26 of 2011 on 14th October 2015 by which the revision application filed by the accused challenging the order dated 18th March 2011 is dismissed.

The matter has a chequered history. The accused and the complainant have shares in the properties of the partnership firm, by succession. According to the complainant, the accused, in connivance with the revenue officers got their names mutated in the revenue records and the name of the complainant was deleted. This gave rise to civil dispute before the Revenue Authorities. The accused got their names mutated during pendency of the civil suit pending since 1999. The complainant claims that there was an injunction order passed by the Civil Court restraining the accused from creating any third party right in the properties in question, however, on the strength of the mutation entries, the accused sold the properties. According to the complainant, the predecessor of the accused (Saroj) was the owner of the properties in question and her name was recorded in the revenue records. Saroj died on 14th May 2001. However, the entries in revenue records were mutated showing names of the legal heirs w.e.f. 1994-1995 i.e. names of the legal heirs were shown in the revenue records during the lifetime of Saroj.

The civil suit is still pending. The entry by which the names of the accused were substituted in place of Saroj in the revenue record is deleted as per the orders passed by the superior Revenue Authorities. This Court, by order dated 7th August 2014 passed in Writ Petition No. 3827 of 2003 has also refused to interfere with the orders of superior Revenue Authorities, clarifying that the entries in revenue records would be subject to decision of the civil dispute.

The submission on behalf of the applicants/ accused is that the learned Magistrate has committed an error by directing registration of the criminal case against them, overlooking the fact that the accused are co-sharers and the civil dispute is pending before the Competent Court. The accused rely on the fact that even this Court, while deciding the Writ Petition No. 2837 of 2003 has observed that the entries in revenue records would be subject to decision of the civil dispute. The applicants/ accused contend that as admittedly they are co-sharers, it cannot be said that by requesting for mutation of their names in the revenue records they have committed any act which can be said to be an offence under Sections 418 and 465 of the Indian Penal Code.

The learned advocate for the applicants, to support the argument, relied on the following judgments:

1) Judgment given by the Hon'ble Supreme Court in the case of *Devendra Vs. State of U.P.*, reported in **2009-SCC-7-495**;

2) Judgment given by the Hon'ble Supreme Court in the case of *Joseph Salvaraj A. Vs. State of Gujrat & oth.*, reported in **2011 AIR (SC) 2258**;

3) Judgment given by the Hon'ble Supreme Court in the case of *Mohd. Ibrahim Vs. State of Bihar*, reported in (**2009) SCC 8- 751**;

It is further submitted that the ingredients necessary to constitute offences under Sections 405, 418 and 465 of the Indian Penal Code do not exist. The applicants/accused pray that the proceedings registered against them be quashed.

The learned advocate for the non-applicant No.2/ complainant and the learned A.P.P. have supported the impugned order and the judgment.

After examining the facts of the case, I find that the learned Magistrate has not committed any error by directing registration of the criminal case against the accused for the offences punishable under Sections 406, 418, 420, 465 and Section 34 of the Indian Penal Code.

There cannot be any doubt and it is well settled proposition that the criminal Courts should be extremely slow in proceeding against the accused where the parties are related and civil disputes are pending. However, it is also well settled that in a given case criminal proceedings in such facts would be maintainable and though civil suit is going on, both the proceedings can run simultaneously (refer judgment given in the case of *P. Swaroopa Rani Vs. M. Hari Narayanana @ Hari Babu,* reported in **AIR 2008 SC 1884**, judgment given in the case of *G. Sagar Suri Vs. State of U.P.*, reported in **2000(2) SCC 636** and the judgment given in the case of *Indian Oil Corporation Vs. NEPC India Ltd.*, reported in **2006(6) SCC 736**). The Hon'ble Supreme Court has examined this issue and has observed that the disputes of civil nature may also contain ingredients of criminal offences and if so, it is criminal offences have to be tried even if they also amount to civil disputes. If the matter is examined from this angle the submission made on behalf of the applicants/accused relying upon the above referred judgment cannot be considered at this stage. I find that the non-applicant No.2/ complainant has brought on record sufficient material and it is rightly considered by the learned Magistrate while directing the registration of proceedings against the accused. At this stage, it has to be examined whether there is *prima-facie* material against the accused for registration of the criminal case and their prosecution. Whether the material on record is sufficient and there is every chance of conviction of the accused is not required to be examined at this stage.

In view of the above, I see no reason to interfere in the matter. The criminal application is **dismissed**.

The applicants have not placed on record the copy of the order dated 18th March 2011 which is challenged by the applicant/ accused in this application under Section 482 of the Code of Criminal Procedure. This Criminal Application is pending since 2015 and after the matter was heard for a considerable time, at one stage it appeared that the matter will have to be adjourned to enable the applicants/ accused to place on record the copy of the order dated 18th March 2011, however, the non-applicant No.2 has placed on record the copy of the order dated 18th March 2011 along with the written submissions filed by him, which prevented unnecessary adjournment.

Because of the lapse on the part of the applicants/accused, they are directed to deposit Rs.Five Thousand with the High Court Legal Services Sub-Committee, Nagpur and produce receipt of it on record of this criminal application within one month.

At this stage, the learned advocate for the applicants/ accused prayed that the interim order granted by this Court on 29th January 2016 may be continued for eight weeks to enable the applicants/ accused to take appropriate steps in the matter.

The request is opposed by the advocate for the non-applicant No.2.

Considering the facts of the case, the request for continuation of the interim order is rejected. However, the learned Magistrate shall not take any coercive action against the applicant/ accused for eight weeks even if he proceeds with the matter.

JUDGE

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