

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1082 OF 2018

1. Mr. Satish s/o. Suvalal Jain (Chordiya)
Age 53 years approximately,
Occupation Agriculture & Service,
Resident of, Rahata, Ganpati Chowk,
Tal. Rahata, Dist. Ahmednagar (Maharashtra),
Presently Residing At, Belapur Road,
Shrirampur, Dist. A'nagar
Mobile No. 9860203797.
2. Mr. Swaroopchand s/o. Kuntal Khabiya,
Age 43 years, Occupation Business
(Provision Stores), Resident of, Borawake
Nagar, Ward No. 7, A/P. Shrirampur,
Tal. Shrirampur, Dist. Ahmednagar
(Maharashtra)
Mobile No. 9890027240.
3. Adv. Dilip s/o. Vasant Joshi,
Age 68 years Approximately,
Occupation : Practicing Lawyer (Advocate)
Resident of, Kopargaon, Shivaji Road,
At/Post - Kopargaon, Tal. Kopargaon,
Dist. Ahmednagar (Maharashtra)

....Applicants.

Versus

1. The State of Maharashtra
At the instance of
The Police Inspector & Investigating
Officer, Rahata Police Station, Rahata,
Tal. Rahata, Dist. Ahmednagar (Maharashtra).
2. The Superintendent of Police,
Ahmednagar, D.S.P. Chowk, Ahmednagar
3. Mr. Manoj s/o. Jawaharlal Pipada,
Age 44 years Approximately,
Occupation : Business (Nursery),
Having address & Resident of
Khandoba Chowk, Pipada Galli, Rahata,
At/Post - Rahata, Tal. Rahata,

Dist. Ahmednagar (Maharashtra)
Mobile No. 9960856090.

....Respondents.

Mr. A.D. Ostwal, Advocate for applicants.

Mr. R.D. Sanap, APP for respondents No. 1 and 2.

Mr. Anand Chaware, Advocate for respondent No. 3.

**CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ.**

DATED : 28/02/2020.

JUDGMENT : [PER T.V. NALAWADE, J.]

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) The present proceeding is filed for relief of quashing of F.I.R. No. 112/2017 registered with Rahata Police Station, Tahsil Rahata, District Ahmednagar for the offences punishable under sections 420, 465, 468, 471 etc. of Indian Penal Code. The crime is registered on the basis of report given by respondent No. 2. He has contended that in a proceeding like M.C.A. No. 45/2015 which was filed by him in Civil Court false record was filed by the present applicants like objection petition and thereby they have committed the aforesaid offences.

3) The aforesaid proceeding was filed by informant for getting succession certificate in respect of deceased Pyarabai Bhikchand Pipada. It is his contention that Pyarabai and her husband

Bhikchand had adopted him and further, Pyarabai had executed will in his favour of her property and on that basis, he had applied for getting succession certificate. It is contended that on 24.9.2015 applications were filed to show that Bhikchand Pipada (Husband of Pyarabai) had objection for issuing succession certificate in favour of the informant. The documents like application, pursis and address memo were filed and even the written statement to the proceeding was also filed. These documents were given exhibits as 6 to 12 by the Civil Court.

4) It is the contention of the informant that Bhikchand had not signed on Exhs. 6 to 12 and these signatures are forged. It is his contention that Bhikchand used to sign in *Modi* script, but the signatures appearing on these documents do not appears to be in *Modi* script. According to him, Advocate Dilip Joshi, applicant No. 3 had filed these documents in the Court and Bhikchand had not turned up. It is contended that Bhikchand was not in a position to move, he was bed ridden and his eye sight and hearing capacities were affected and he was not in a position to sign on any document. It is contended that Advocate Joshi joined hands with applicant Nos. 1 and 2 and with the intention to grab the property of both Pyarabai and Bhikchand such objection was taken. The F.I.R. was given on 13.10.2017 when according to the informant those documents were filed in the Court on 24.9.2015.

5) The learned counsel for informant took this Court through many documents and the learned counsel for applicants also showed many documents to this Court. The submissions made and the record show that in the year 2010 suit for relief of injunction was filed by informant against Bhikchand. On one hand, informant is claiming that Bhikchand and his wife had adopted him and on the other hand, in the year 2010 he had filed suit for relief of injunction against Bhikchand. This single circumstance shows that Bhikchand was not admitting the contentions of the informant that informant was adopted by Bhikchand and his wife. On the basis of these circumstances, it can be said that in ordinary course, Bhikchand would have taken objection to the proceeding filed for getting succession certificate by the informant. If the adoption is not proved, informant cannot get any property of either Bhikchand or his wife.

6) The learned counsel for informant submitted that in one matter, Court Commissioner was appointed for recording the cross examination of Bhikchand and the report of Court Commissioner dated 17.3.2016 shows that Bhikchand was not in a position to give evidence, to face the cross examination. Such record is there, but that does not mean that on 8.10.2015 when the reply was filed to take objection to the proceeding filed by the informant, Bhikchand was not able to take decision like taking objection to the proceeding.

The learned counsel for informant submitted that there is more record like noting made in Criminal Case No. 183/2011 by the learned J.M.F.C., Rahata that on 23.6.2016 Bhikchand was not able to give evidence in the Court. The Court recorded that the age of Bhikchand was around 85 years and so, the Court held that he was not competent to give evidence as a witness in the Court. That noting is of 23.6.2016 and on the basis of that, inference is not possible that on 8.10.2015 Bhikchand was not able to sign the aforesaid documents.

7) The submissions made show that applicant Nos. 1 and 2 are claiming that the aforesaid couple Bhikchand and his wife have executed will in their favour as applicant Nos. 1 and 2 are their relatives and they are entitled to get the property. On the other hand, it is the case of informant that he was adopted by this couple and wills are also executed by them in favour of the informant. In the proceeding which was filed for succession certificate application was moved by the informant for sending aforesaid disputed signatures to Hand Writing Expert, but that application was rejected by the Civil Court. The said decision is challenged by informant by filing writ petition on civil side and that petition is still pending. When in any matter, it is the contention that the signatures are forged, the burden is ordinarily on the person who makes such contention. There are more circumstances like the attempt was made to send the

signatures only after death of Bhikchand and all actions were taken in respect of that allegation after the death of Bhikchand. Due to these circumstances, in such case it is always desirable that the civil court takes decision on the dispute. The matter involves dispute in respect of the entitlement to get the property of two deceased persons and there are aforesaid circumstances. The learned counsel for informant submitted that the investigation in to the allegations of forgery need to be made on criminal side. This contention is not acceptable in view of the aforesaid circumstances. Due to all these circumstances, this Court holds that it is not desirable at this stage to intervene in the dispute and it is desirable that the Civil Court first gives decision and if it is found that the signatures were forged, further action can be taken. In the result, following order.

ORDER

- (I) Application is allowed.
- (II) Relief is granted in terms of prayer clause "B", subject to the outcome of the proceeding in which, on civil side, it is the contention of the informant that the signatures of Late Bhikchand Pipada are forged.

Rule is made absolute in those terms.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

SSC/