

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

CRIMINAL WRIT PETITION NO.19 OF 2022

(Ramesh Mahadevrao Nandane .Vs. State of Maharashtra and Anr.)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri. R. D. Dharmadhikari, Advocate for Petitioner
Ms. T. H. Udeshi, APP for Respondent No.1
Shri. R. A. Bagde, Advocate for Respondent No.2.

CORAM : AVINASH G. GHAROTE, J.

DATE : 5th APRIL, 2022.

Heard Mr. Dharmadhikari, learned Counsel for Petitioner, Ms. T. H. Udeshi, learned APP for Respondent No.1/State and Mr. Bagde, learned Counsel for Respondent No.2.

2. The petition challenges the order dated 06.04.2021, by which process has been issued by the learned Magistrate under Sections 420 and 465 of the Indian Penal Code (IPC) against the Petitioner. Mr. Dharmadhikari, learned Counsel for Petitioner submits, that the perusal of the complaint (Page 29) would indicate that the ingredients of Sections 420 and 465 of the IPC are not spelt out therefrom, considering which, the process could not have been issued. It is further contended, that the Respondent No.2, had already instituted RCS 65/2012, on 29.02.2012, claiming a declaration that the property in question was an ancestral property, and therefore, he had 1/7th undivided share therein and was entitled to partition and separate possession therein. The registered partition

deed dated 09.12.2005 between the Petitioner and his father was also challenged on the ground that it was obtained by misrepresentation and undue influence. There is no challenge to the Will dated 21.05.2007, executed and registered by late Mahadeorao Shivaji Nandane in favour of the Petitioner. An earlier attempt to file a criminal complaint in 2016, was not fruitful and the present complaint has been filed on 10.12.2020, nearly eight years after the filing of Regular Civil Suit No.65/2012, and therefore, considering all these aspects, process ought not to have been issued as no case was made out for the same. Reliance is placed on **Krishna Lal Chawla .Vs. State of U.P, (2021) 5 SCC 435 (Para 15), Dayle De Souza .Vs. Government of India, 2021 DGLS (SC) 711 (Para 32) and Vinod Natesan .Vs. The State of Kerala, AIR 2019 SC 296 (Para 6)**, in support of his contention.

3. Mr. Bagde, learned Counsel for Respondent No.2, vehemently opposes the petition and contends that a case under Sections 420 and 465 of the IPC is made out, for the reason that the partition deed dated 09.12.2005, was got executed by the Petitioner, by exercising undue influence upon the father Mahadeo. It is also contended, that the partition deed is based upon misrepresentation as to the factuality of the matter, inasmuch the property which is claimed to have been given to Respondent No.2, is in fact, the self acquired property of Respondent No.2. Reliance is also placed upon **M. Krishnan .Vs. Vijay Singh, 2001 DGLS (SC) 1317**, which holds that mere pendency of Civil Suit cannot be a ground for quashing criminal proceedings;

Hardeo Singh .Vs. State of Bihar, 2000 DGLS (SC) 984 and Indian Oil Corporation .Vs. NEPC India Ltd. and Ors., 2006 DGLS (SC) 582 (Para 28), on the same ground. He therefore submits, that case for issuance of process has been made out, and therefore, the impugned order ought not to be interfered with.

4. Ms. T. H. Udeshi, learned APP for Respondent No.1/State, supports the impugned order and submits, that the application needs to be rejected.

5. For the purpose of determining, whether a case for issuance under Sections 420 and 465 of the IPC is made out, it is necessary to test the averments in the complaint as filed by the Respondent No.2. The complaint is dated 10.12.2020 (Page 29) and is filed against as many as 11 persons including the Sub-Registrar of document Warud. The basic ground in the complaint is that in the partition deed dated 09.12.2005, there is misrepresentation to the effect that the property bearing Gut No.178, Mouja Aasona was given to the Respondent No.2, and therefore, the Respondent No.2, was not being given any share in the partition. The partition deed has been executed between Mahadeo the father and Ramesh the son. There is no challenge to this document since 2005 till 2012, when the Suit for partition and declaration came to be filed by the present Respondent No.2. Till the filing of the complaint, which has been filed on 10.12.2020, the earlier attempt to approach the Criminal Court, in the year 2014, has not been taken through to its legal end. The legality and validity of

the partition deed dated 09.12.2005, on the basis of the allegation, that it was got executed by the Petitioner, from his father deceased Mahadeo, is the subject matter of RCS No.65 of 2012, and shall be decided in due course of time.

6. Coming to the averments to the complaint, it is submitted that the partition deed dated 09.12.2005, attracts the provisions of Sections 420 and 465 of the IPC. A perusal of Section 465 of the IPC, indicates that it provides punishment for forgery. Forgery is defined in Section 463 of the IPC, reads as under :

“463. Forgery.-

Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

7. It would thus apparent, that for the purpose of Section 463 of the IPC, to be attracted what is necessary is the making of a false document as contemplated by Section 464 of the IPC. Mr. Bagde learned Counsel for Respondent No.2, relies heavily, on what has been stated in, secondly Section 464 of the Indian Penal Code, in support of his contention that forgery has been committed. It would

however be material to note, that the aforesaid provision, specifically contemplates alteration of a document or electronic record, after it has been made. There is no single averment in the complaint which supports this contention. Merely stating that a forged document has been made is neither here nor there, for the complaint should *prima facie* demonstrate the satisfaction of the definition as contained in Section 463 of the IPC, and the requirements as delineated in Section 464 of the IPC thereunder, and it is only upon satisfaction of the said requirement, that it would be permissible for issuing the process.

8. Even considering Section 415 of the IPC, which defines cheating, the averments in the complaint fall short of satisfying the requirement, of what is defined by the Section 415 of the IPC, in as much as, there is no alleged dishonesty for deliver of any property by the Applicant to Respondent No.2, nor any of the other ingredients are demonstrated in the complaint. The impugned order (Page 34) unfortunately, while issuing the process against the present Applicants, has not considered the requirement of law and its satisfaction, so as to enable it to issue process. The only reasoning is in Para 7, which in view of what is stated in Para 5, are considered enough to issue process under Sections 420 and 465 of the IPC, however, what is material to note is that Para 5 of the impugned order merely narrates the execution of the partition deed and the Will deed, and there is no reasoning in Para 7 whatsoever as to how, the ingredients necessary for the

purpose of Sections 420 and 465 of the IPC, are satisfied, considering which, though it is settled position of law that any particular cause may also give rise to civil as well as criminal remedy, however, in order to put in motion the criminal law, which has the tendency to curtail the liberty of a person, the requirement of the provisions, ought to be satisfied, which satisfaction is necessary to be disclosed from the order issuing process, which however, is not the position in the impugned order, considering which, the petition is **allowed**. The impugned order is hereby quashed and set aside and the complaint as filed by the Respondent No.2 is dismissed. No costs.

JUDGE

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