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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-41647 of 2018

Date of Decision: January 25, 2023

Col. Mandeep Sandhu

...Petitioner

Versus

UT of Chandigarh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Puneet Bali, Senior Advocate with
Mr. R. Kartikeya, Mr. Ranjeet Saini and
Mr. Sunny Juneja, Advocates for the petitioner.

Mr. A.M. Punchhi, PP for UT., Chandigarh.

Mr. Rahul Sharma, Advocate for respondent No.2.

DEEPAK GUPTA, J.(Oral)

By way of this petition filed under Section 482 Cr.P.C., prayer is made to quash FIR No.36 dated 09.03.2006 registered at Police Station Sector-3, Chandigarh under Sections 467, 468, 471, 120-B IPC and all the subsequent proceedings arising therefrom.

2. One Pawandeep Sandhu had executed a Will dated 14.11.2004 bequeathing his estate in favour of his mother Smt. Kuldeep Kaur. The Will was witnessed by Lt. Col. Jasdeep Sandhu and Banta Singh. Said Pawandeep Sandhu died on 18.01.2005. Petitioner Col. Mandeep Sandhu is the brother; whereas Smt. Ritu Grewal is sister of Pawandeep Sandhu. Respondent No.2- Rajeshwari is the alleged wife of Pawandeep Sandhu.

3. Respondent No.2 – Rajeshwari got registered FIR No.36 dated 09.03.2006 under Sections 467, 468, 471, 120-B IPC at Police Station Sector 3 Chandigarh against petitioner, his mother Smt. Kuldeep Kaur, sister Smt. Ritu Grewal and two attesting witnesses of the Will, alleging the

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forgery of the Will. On the other hand, Smt. Kuldeep Kaur filed probate case bearing No.RT-1/16.06.2009/27.03.2006 – CIS/PROB-000002/2013 before learned Additional District Judge, Ludhiana on the basis of above-said Will dated 14.11.2004, wherein respondent No.2 was also impleaded as a party. The probate case was dismissed by learned Additional District Judge, Mohali on 31.03.2015 by holding that Will is proved but the same was surrounded by suspicious circumstances. However, FAO No.5306 of 2015 (O&M) filed by Smt. Kuldeep Kaur was allowed by this High Court vide order dated 13.01.2022 (Annexure P.12) and the Will was held to be genuine. Aggrieved by the said order, Rajeshwari filed Special Leave Petition No.6452 of 2022 but the same was dismissed by Hon'ble Supreme Court on 13.04.2022 vide Annexure P.13. The review petitions filed by Rajeshwari as well as respondent No.1 – UT, Chandigarh were also dismissed on 02.11.2022 and 12.12.2022 (Annexure P.14 and Annexure P.16 respectively).

4. Petitioner has prayed for quashing FIR No.36 dated 09.03.2006 in view of the finding returned by the Civil Court. On the other hand, contention of the respondents is that the findings of the Civil Court are not binding on the Criminal Court and that matter is required to be investigated qua the genuineness of the Will, as the said Will is alleged by the complainant of the FIR i.e. Respondent No.2 Rajeshwari to be a forged document.

5. I have considered the submissions of both the sides and have appraised the record.

6. Section 41 of the Indian Evidence Act, 1872 reads as under:-

“41. Relevancy of certain judgments in probate, etc., jurisdiction.—A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.”

7. A bare perusal of the above-said provision reveals that the final judgment, order or decree of the competent Court in exercise of the probate jurisdiction is conclusive proof regarding any legal character, which is declared by the same or which is accrued to a person by way of

the said judgment, order or decree. In ***K.G. Premshanker Vs. Inspector of Police and Another, (2002) 8 SCC 87***, after reviewing the relevant precedents on the matter, Hon'ble Supreme Court held as under:-

“30...(4). if the criminal case and the civil proceedings are for the same cause, judgment of the civil Court would be relevant if conditions of any of the Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.”

8. It is, thus, clear that legislature has carved out a special provision for judgments under Section 41 of the Indian Evidence Act, wherein such decisions are to be taken as conclusive proof of what is stated therein and binding on all courts, whether civil or criminal.

9. Learned counsel for the respondents have referred to ***Syed Askari Vs. State, (2009) 5 SCC 528***, wherein it was held that if a judgment of Civil Court is not binding on the Criminal Court, a judgment of a Criminal Court will certainly not be binding on a Civil Court. However, in the aforesaid case, Hon'ble Supreme Court after referring to Section 41 of the Indian Evidence Act held as under:-

“31...It speaks about a judgment. Section 41 of the Evidence Act would become applicable only when a final judgment is rendered. Rendition of a final judgment which would be binding on the whole world being conclusive in nature shall take a long time. As and when a judgment is rendered in one proceeding subject to the admissibility thereof keeping in view Section 43 of the Evidence Act may be produced in another proceeding.

32. It is, however, beyond any cavil that a judgment rendered by a probate court is a judgment in rem. It is binding on all courts and authorities. Being a judgment in rem it will have effect over other judgments. A judgment in rem indisputably is conclusive in a criminal as well as in a civil proceeding.”

10. It is, thus, clear that a judgment by a probate Court as per Section 41 of the Indian Evidence Act is in rem. Same is conclusive in civil as well as criminal proceedings. In **Syed Askari case (supra)**, the proceedings were still pending before the Civil Court. However, in the instant case, the same have attained finality, inasmuch as after holding the genuineness of the Will by this High Court vide Annexure P.12 in FAO No.5306 of 2015, the Special Leave Petition as well as the review petition filed by respondent No.2 have since been dismissed by Hon'ble Supreme Court.

11. A similar situation arose before this High Court in CrI. Misc. No. M-29605 of 2008 titled as 'Nirmala Devi vs. State of Punjab' decided on 2.04.2009, wherein it was held as under:-

“The primary grievance of the complainants is that the Will executed by Amar Nath in favour of the accused was a forged and fabricated document. Once the Civil Court has held the Will to be genuine and this finding has also been upheld by the lower Appellate Court and by this Court in Regular Second Appeal, there is nothing, which can be urged to the contrary by the complainants to say that the Will was a forged and fabricated document.

Hence, present petition is accepted and the FIR no.13 dated 17.01.2007 registered at Police Station City, Malout under Sections

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465, 467, 468, 120-B IPC, along with all subsequent proceedings, is quashed.”

12. Faced with the aforesaid situation, learned State Counsel submits that respondent No.1 has not got the opportunity to investigate the matter regarding the genuineness of the Will because the original Will was never supplied to them; on account of it being part of Civil Court record. There is no merit in the contention. The judgment of the probate Court having attained finality, as has been observed above, what is left for any Court to do in the present FIR is not beyond imagination of anybody. Let it be assumed for the sake of arguments that Police investigates the matter and come to the conclusion that Will is not genuine and files report under Section 173 Cr.P.C accordingly. The question is as to whether any Court will be able to ignore the findings of the Civil Court regarding genuineness of the Will, which has attained finality upto Hon'ble Supreme Court. The answer is obviously NO.

13. In view of the aforesaid discussion, this Court has no hesitation to hold that continuation of the proceedings of the FIR in question will be a sheer wastage of time. As such, FIR No.36 dated 09.03.2006 registered under Sections 467, 468, 471, 120-B IPC at Police Station Sector-3, Chandigarh and all the subsequent proceedings arising therefrom, are hereby quashed. Petition is allowed accordingly.

January 25, 2023
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(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No