

262      IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-23151-2017 (O & M)  
Date of decision: 11.03.2024

KAPILA SHARDA

...PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Ajit Singh Sodhi, Advocate  
for the petitioner.

Mr. Rishabh Singla, AAG, Punjab.

Mr. Kuldip Sanwal, Advocate  
for respondent Nos.4 to 6.

Mr. Umesh Kumar Kanwar, Advocate  
for respondent No.7.

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**HARPREET SINGH BRAR J. (ORAL)**

The petitioner has approached this Court, by filing present petition under Section 482 of the Code of Criminal Procedure, seeking quashing of the impugned judgment dated 23.07.2015 passed by learned Chief Judicial Magistrate, Fazilka, in criminal case bearing No.46-1 of 11.06.2014, vide which, the application moved by the petitioner under Section 156(3) Cr.P.C. was dismissed as well as the impugned order dated 03.12.2016, passed by learned Additional Sessions Judge, Fazilka, in the revision petition bearing No.135 of 04.08.2015 filed by the petitioner, vide which, said revision petition was also dismissed. Additional prayer is made for issuance of directions to the concerned police for registration of FIR against respondent Nos.3 to 7, under Sections 406, 419, 420, 467, 468, 471 and 120-B of IPC or any appropriate Sections as deemed appropriate.

**FACTUAL MATRIX**

2. The facts, in brief, are that the petitioner is the daughter of respondent No.4, namely, Mahabir Parshad Sharda, grand-daughter of respondent No.3, namely, Dhanpati Devi, sister of respondent No.5, namely, Basant Kumar, whereas respondent No.6, namely, Saroj Sharda is the sister-in-law of the petitioner. Respondent Nos.3 to 6 are the members of one family and residing under one roof having one kitchen in Fazilka. The petitioner is a divorcee lady residing in Malegaon District Nasik, which is at a distance of about 1800 kms. from Fazilka, for the past 12 years with her ten-year old daughter without any support from her family. The petitioner, being grand-daughter of late Sh. Sagar Mal Sharda, claims to have a legal right in the Joint Hindu Undivided Ancestral Property, from her birth as the legal right is conceived in her favour, with her conception and being born from the womb of late Smt. Kanta Devi, with the sons of respondent No.4-Mahabir Parshad Sharda son of Sh. Sagar Mal Sharda. By virtue of her birth, the petitioner reserves a legal right in the Joint Hindu Family property, left by her grandfather Sh. Sagar Mal Sharda, at the time of his death. Allegedly, in order to take away the right of the petitioner, respondent Nos.3 to 6 got prepared a Will dated 10.11.1989, against the wishes of the testator Sh. Sagar Mal Sharda but even as per the aforesaid Will, only 1/4<sup>th</sup> share of one of the suit properties, i.e., Kothi No.3889 Farsh No.14, Fazilka fell into the hands of respondent No.3 Dhanpati Devi whereas 3/4<sup>th</sup> share remains stated to be of Hindu Undivided Family property. Respondent No.3 even filed an application for probate, on the basis of the aforesaid Will, before the concerned Civil Court but the same was not allowed qua the properties in dispute. Acting upon the Will dated 10.11.1989 with a mala fide intent, respondent No.3-Dhanpati Devi sold off 1/4<sup>th</sup> share out of the disputed property to respondent No.5-Basant Kumar

Sharma on 28.09.1994, vide a registered sale deed. However, on the very next day, respondent No.3-Dhanpati Devi again sold another 1/4<sup>th</sup> share out of the same property to respondent No.4-Mahabir Parshad Sharda. Again, after 10 days, respondent No.3-Dhanpati Devi sold another 1/4<sup>th</sup> share out of the same property to Basant Kumar Sharda, vide sale deed dated 10.10.1994 and the finally sold the last 1/4<sup>th</sup> share to respondent No.6-Saroj Sharda, vide registered sale deed dated 03.08.2005. Thereby, respondent No.3, despite being the owner of only 1/4<sup>th</sup> share of the disputed property, as per the aforesaid Will, eventually sold off the entire property, after conspiring with other private respondents, in order to defeat the rights of the petitioner, in the suit property. Four different sale deeds in total were executed one after the other only to perpetuate a fraud upon the petitioner. Allegedly, even respondent No.7, namely, Kanwar Narinder Singh, being the Sub-Registrar and despite being in position to easily see the fraud being committed with the petitioner, willfully and for extraneous considerations chose to ignore the same. Application in regard to the aforesaid fraud was moved to the concerned police, by the petitioner but the police declined to take any action. The petitioner, thereby, approached this Court, by way of a previous petition filed under Section 482 Cr.P.C. bearing No. CRM-M-1936-2014, seeking directions to the concerned police for registration of an FIR against the private respondent and the same was disposed of with liberty granted to the petitioner to avail appropriate remedy in accordance with law. In consequence, the petitioner filed the complaint (supra) under Section 156(3) Cr.P.C.

3. Learned trial Court, after appraisal of the preliminary evidence on record, dismissed the complaint (supra), filed by the petitioner vide order dated 23.07.2015, by holding that sufficient grounds for proceeding against the private respondents are not made out.

4. Aggrieved by the above-said order, the petitioner preferred a revision petition before the Court of learned Additional Sessions Judge, Fazilka, which was dismissed being devoid of any merit vide impugned order dated 03.12.2016. Hence, the petitioner has approached this Court by way of the present petition.

### **CONTENTIONS**

5. The learned counsel for the petitioner *inter alia* contends that respondent no.4, being the *Karta* of the HUF, in connivance with respondent Nos.3, 5 & 6 and in lieu of the false, fabricated and forged Will dated 10.11.1989, sold off substantial share of the suit properties, in order to avoid giving any rightful share in the said property, to the petitioner in anticipation of any adverse order being passed against them, in the civil suit for declaration and injunction filed by the petitioner, wherein, she has claimed her share as a coparcener in the suit properties. It is further submitted that respondent Nos.3 to 6 are living in a joint family and have one address but still four different sale deeds qua the said property were executed, one after the other only to perpetuate fraud upon the petitioner. He further submits that vide the aforesaid Will, respondent No.3-Dhanpati Devi, being the wife of the testator, inherited 1/4<sup>th</sup> share in another suit property, i.e., Nohra 4321, Farsh No.14, Fazilka, but illegally alienated 3/4<sup>th</sup> share of the said property vide sale deed dated 23.09.1994 to her grandson, i.e., respondent No.5, who himself is one of the attesting witnesses of the said Will and again sold off the remaining 1/4<sup>th</sup> share vide sale deed dated 10.08.2004 to him. He further submits that all the beneficiaries/vendees of all six sale deeds executed by Dhanpati Devi, clearly knew that they were committing fraud. Learned counsel for the petitioner further submits that respondent No.7 was the Sub-Registrar, who executed 3 of the above-said sale deeds but willfully neglected the fraud committed by

respondent Nos.3 to 6.

6. Learned counsel for the petitioner further submits that the learned trial Court has wrongly held that the property in dispute sold before 2005 could not be held to be joint HUF property and has also wrongly held that the matter is civil in nature, since there the fraud committed by the private respondents is clear from the above-mentioned transactions qua the suit property.

7. *Per contra* learned counsel for the respondent Nos.3 to 6, at the outset, submits that the petitioner is eligible to get her share from the ancestral property of her father-respondent No.4 after the amendment of 2005, in the Hindu Succession Act, 1956, but her father is still alive and not from the self-earned property of her grandfather (testator) who bequeathed whole of his self-earned property in the name of his wife-respondent No.3 in 1989 and passed away in 1990. The testator of the above-said Will dated 10.11.1989, Sh. Sagar Mal Sharda, i.e., the grandfather of the petitioner, died in 1990 and the petitioner is claiming her right through her father respondent No.4, namely, Mahabir Parshad Sharda, who is alive which means that the petitioner has no *locus standi* to challenge the above-mentioned Will of her grandfather. He further submits that the petitioner is claiming her right of inheritance on the basis of the amendment made in 2005, in the Hindu Succession Act, 1956 but the amended provisions were prospective in nature and not retrospective. Since the testator, whose succession the petitioner is claiming, died in 1990, the petitioner cannot invoke the amended provisions in the present case and thus, the same is liable to be dismissed.

8. Learned counsel for respondent Nos.3 to 6 further submits that admittedly, as per para no.8 of the judgment passed by learned trial Court, civil litigation between the parties with regard to the above-said sale deeds as well as the Will is pending before the concerned Civil Court and the petitioner is

constantly trying to convert a civil matter into a criminal one in order to arm-twist the private respondents.

9. Learned counsel for respondent No.7, namely, Kanwar Narinder Singh, the Sub-Registrar at the time of execution of the above-said sale deeds, reaffirms the submissions made by learned counsel for respondent Nos.3 to 6 and further submits that the petitioner has made absolutely bald allegations against the respondents and the learned trial Court, after appreciating the preliminary evidence of the petitioner-complainant, did not find any substance in the allegations made by her and thereby, correctly dismissed her complaint (supra). It is further contended that sanction under Section 197 Cr.P.C. was not sought by the petitioner, as respondent No.7 acted solely in discharge of his official duty.

10. Learned state counsel submits that the learned Courts below have correctly appreciated the evidence on record before passing the judgments under challenge in the present case and thus, do warrant any interference by this Court.

### **ANALYSIS & OBSERVATION**

11. After giving my thoughtful consideration to the submissions put forth by all sides and on careful perusal of the material on record, this Court is inclined to accept the submissions made by the learned counsel for the respondents. A careful perusal of the material on record shows that the petitioner has miserably failed to prove that the above-said Will was forged or fabricated by the respondents. The petitioner did not examine any witness, in her preliminary evidence, to prove forgery or impersonation. As the petitioner has failed to prove the allegation of forgery, then cheating also cannot be proved and hence, it cannot be said that the petitioner was ever deceived by the respondents. Furthermore, the petitioner failed to produce any revenue record

or other relevant document to show that the property qua which she is claiming her share is actually a Hindu Joint Family property. Hence, the intention to cheat from the very inception appears to be missing in the present case.

12. Pertinently, it is important to mention that as per the proviso to Section 6 of the Hindu Succession Act, 1956, the alienation of property, which has taken place before 20.12.2004, is not affected by the amendment made in the same in 2005. In the case at hand, the testator-Sh. Sagar Mal Sharda died in 1990 and all the above-mentioned sale-deeds have been executed by the year 2005 at the latest. As far as respondent No.7 is concerned, it appears that he had acted in discharge of his official duty but previous sanction as per Section 197 Cr.P.C., before involving him in the present case, was not sought by the petitioner.

13. Moreover, the petitioner herself has admitted before the learned trial Court that a civil litigation was initiated by her against the respondents with respect to the above-mentioned sale deeds executed on the basis of the allegedly forged Will 10.11.1989. It is settled law that the recourse to inherent power of under Section 482 CrPC can be adopted to ensure that criminal proceedings are not allowed to be used as weapons of harassment. Undoubtedly, the existence of pending civil suit between the petitioner and the respondents before a competent civil Court makes it clear that the current dispute is essentially of civil nature and the petitioner has already taken recourse to the civil remedy available. In the considered opinion of this Court, the criminal proceedings launched by the petitioner cannot be sustained in the facts and circumstances of the present case.

14. A two Judge bench of the Hon'ble Supreme Court in ***Paramjeet Batra v. State of Uttarakhand & ors (2013) 11 SCC 673***, speaking through both Justice Aftab Alam and Justice Ranjana P. Desai, has held as under:

*“7. While exercising its jurisdiction under section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.”*

15. A similar view was taken by a Two Judge Bench of the Hon’ble Supreme Court in ***Vesa Holdings P. Ltd. v. State of Kerala (2015) 8 SCC 293***. Speaking through Justice C. Nagappa, it was observed as follows:

*“9. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 I.P.C. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and the High Court committed an error in refusing to exercise the power under Section 482 Criminal Procedure Code to quash the proceedings.”*

## **CONCLUSION**

16. All of the above-mentioned facts clubbed together establish that

the observations recorded by the learned trial Court as well as the learned Court of revision are valid and thus, liable to be upheld.

17. In view of the above discussion, the present petition is dismissed on merits. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

March 11, 2024

*manisha*

(HARPREET SINGH BRAR)  
JUDGE

- |      |                           |        |
|------|---------------------------|--------|
| (i)  | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable        | Yes/No |