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CRM-M-41704-2018 and another connected case

269 (2 cases)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision:- 23.09.2024

(1)

CRM-M-41704-2018

Savita Vasesi

.... Petitioner

Vs.

Ram Kumar Vasesi

.... Respondent

(2)

CRM-M-33091-2019

Shiv Kumar Vasesi

.... Petitioner

Vs.

Ram Kumar Vasesi

.... Respondent

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Kunal Dawar, Advocate
for the petitioner(s) in both cases.

Mr. Munish Jolly, Advocate
for the respondent in both cases.

AMARJOT BHATTI, J.

Petitioners Savita Vasesi and Shiv Kumar Vasesi have filed separate petitions under Section 482 Cr.P.C. for quashing of Criminal Complaint No. 4285 dated 03.09.2015 titled “Ram Kumar Vasesi Vs. Shiv Kumar Vasesi and Ors.” under Sections 420, 467, 468, 471, 120-B of IPC, pending in the Court of learned Judicial Magistrate Ist Class, Chandigarh (Annexure P-6 in both cases) alongwith all subsequent proceedings arising



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therefrom including order dated 16.09.2016 (Annexure P-10 in both cases) passed by learned Judicial Magistrate Ist Class, Chandigarh, summoning both petitioners to face trial under Sections 420/467/468/471 read with Section 120-B of IPC. Both these petitions are taken up together for disposal, having been arisen out of common complaint (Annexure P-6) and common summoning order dated 16.09.2016 (Annexure P-10).

2. As per the facts stated in complaint Annexure P-6, Ram Kumar Vasesi filed a complaint under Section 156(3) of Cr.P.C. seeking direction to register FIR against accused namely Shiv Kumar Vasesi (brother), Savita Vasesi (wife of accused no.1), D.K. Jain and Jasbir Bakshi (marginal witnesses of Will in dispute dated 07.12.2013). It is alleged that Dr. Chaman Lal Vasesi, father of complainant was owner of House No. 563, Sector 16-D, Chandigarh, who died intestate on 17.05.2003 at Chandigarh. He left behind two sons namely Ram Kumar Vasesi and Shiv Kumar Vasesi and a daughter namely Rama Thapar. Complainant Ram Kumar Vasesi and his sister had filed a civil suit seeking partition of aforesaid house against Shiv Kumar Vasesi, claiming 1/3rd share each. In the said litigation, accused No. 1 and his Power of Attorney Holder accused No. 2 raised the plea that their father Dr. Chaman Lal Vasesi had executed an unregistered Will dated 07.12.2013. Said Will is alleged to be a forged and fabricated document prepared by accused No.1 Shiv Kumar Vasesi and accused No. 2 Smt. Savita Vasesi in connivance with attesting witnesses accused No. 3 D.K. Jain and accused No. 4 Smt. Jasbir Bakshi. In civil suit decided on 27.11.2014, learned Civil Judge (Junior Division), Chandigarh came to the



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conclusion that Will produced by Shiv Kumar Vasesi was a forged and fabricated document. Complaint was filed before Superintendent of Police, U.T. Chandigarh. However, police did not take any action and ultimately, complaint was filed. Learned counsel for petitioners argued that civil suit filed by Ram Kumar Vasesi and other was contested by Shiv Kumar Vasesi and was ultimately decided vide judgment and decree dated 27.11.2014. Copy of plaint in suit for partition bearing Civil Suit No. 4132 dated 03.08.2005 is Annexure P-1. Written statement filed by defendant Shiv Kumar Vasesi (petitioner in CRM-M-33091-2019) in that case, including amended written statement is annexed as Annexures P-2 and P-3 respectively. Will dated 07.12.2013 is Annexure P-4. Copy of judgment dated 27.11.2014 is Annexure P-5, vide which suit filed by plaintiffs (Ram Kumar Vasesi and Rama Thapar) seeking 1/3rd share each in the property was decreed by passing a preliminary decree. It is argued that an appeal was preferred against aforesaid judgment and decree, which was dismissed on 16.05.2018 and at present RSA is pending. Therefore, stand taken by complainant that Will dated 07.12.2013 is a forged and fabricated document is not justified, as RSA is still pending for adjudication.

3. Learned counsel for petitioners further raised the issue that allegations and role of petitioners in commission of alleged offence were not rightly considered by trial Court. It is argued that Savita Vasesi (petitioner in CRM-M-41704-2018) had no role to play in aforesaid civil suit nor she is scribe or witness to the Will in dispute. Without proper appreciation of facts, Savita Vasesi has been wrongly summoned by

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passing impugned order dated 16.09.2016, Annexure P-10. Learned counsel for petitioners also placed on record statements of witnesses recorded before learned Magistrate i.e. Devender Prasad, Forensic Document Expert CW-1 along with his affidavit as Annexure P-8 and statement of Ram Kumar Vasesi CW-3 as Annexure P-9. No specific role is attributed to Savita Vasesi. Therefore, complaint filed against her and aforesaid summoning order are liable to be quashed.

Regarding Shiv Kumar Vasesi, it is further pointed out that matter in controversy is civil in nature and in order to harass the petitioners, it has been given criminal angle. Petitioners have not cheated the complainant nor any fake document was prepared or used by petitioners. Therefore, petition filed on behalf of Shiv Kumar Vasesi for quashing of complaint as well as aforementioned summoning order be allowed as prayed for.

4. On the other hand, learned counsel representing respondent argued that summoning order dated 16.09.2016, Annexure P-10 does not require any interference. There are specific and serious allegations against all accused including the present petitioners. All accused, in connivance with each other, prepared a forged and fabricated Will dated 07.12.2013, which was used in civil suit filed by Ram Kumar Vasesi and other seeking partition of house, left behind by their father Dr. Chaman Lal Vasesi. There are two consistent judgments passed by Civil Courts holding said Will dated 07.12.2013 as forged and fabricated document. Therefore, considering the allegations and the manner in which said fake Will has

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been prepared by all accused in connivance with each other, both petitions filed by Savita Vasesi and Shiv Kumar Vasesi are liable to be dismissed.

5. I have considered the arguments and have gone through the record carefully. It is an admitted fact that House No. 563, Sector 16-D, Chandigarh was owned by Dr. Chaman Lal Vasesi, father of complainant Ram Kumar Vasesi (respondent in both petitions) and accused No. 1 Shiv Kumar Vasesi (petitioner in CRM-M-33091-2019), who died on 17.05.2003. Dr. Chaman Lal Vasesi left behind two sons and a daughter, out of which Ram Kumar Vasesi and Rama Thapar filed suit for partition of aforesaid house, which was contested by petitioner Shiv Kumar Vasesi. Learned counsel for petitioners in both petitions have placed on record copy of plaint in Civil Suit No. 4132 dated 03.08.2005, in the suit for partition titled "Ram Kumar Vasesi and Another Vs. Shiv Kumar" as Annexure P-1. Written statement and amended written statement filed by petitioner/defendant Shiv Kumar Vasesi are Annexures P-2 and P-3 respectively and Will in dispute is Annexure P-4. Suit filed by plaintiffs was decreed by passing a preliminary decree for partition, holding that plaintiffs (Ram Kumar Vasesi and Rama Thapar) and defendant (Shiv Kumar Vasesi) each have 1/3rd share in aforesaid property, whereas stand taken by petitioner Shiv Kumar Vasesi on the basis of unregistered Will dated 07.12.2013 was declined by holding that said Will was forged and fabricated. Copy of judgment dated 27.11.2014 is Annexure P-5. During the course of arguments, it was alleged that appeal preferred by petitioner Shiv Kumar Vasesi was dismissed and RSA is pending. As a result of

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finding given by the Civil Court, Ram Kumar Vasesi filed complaint against Shiv Kumar Vasesi and others, which is Annexure P-6. Copy of order dated 15.09.2015 is Annexure P-7 vide which complainant was called upon to lead preliminary evidence. Statement complainant Ram Kumar Vasesi is Annexure P-9 and statement of handwriting expert as CW1 is Annexure P-8. On the basis of evidence, trial Court passed impugned order dated 16.09.2016, Annexure P-10 vide which all accused were summoned under Sections 420, 467, 468, 471 and 120-B of IPC for 19.11.2016.

6. Firstly, I will deal with petition filed by petitioner Savita Vasesi in CRM-M-41704-2018 vide which she has been summoned vide summoning order dated 16.09.2016, Annexure P-10. Perusal of Will in dispute (Annexure P-4) indicates that Savita Vasesi is neither scribe nor marginal witness of Will in dispute. She was not party to civil litigation. Except alleged conspiracy, no specific role is attributed to her. There is nothing on record that she played any active role pertaining to unregistered Will dated 07.12.2013. Even in the statement of Ram Kumar Vasesi as CW-3 (Annexure P-9), no specific role is attributed to her. Therefore, considering the aforesaid factual position, learned trial Court while passing summoning order dated 16.09.2016 (Annexure P-10) did not consider aforesaid facts. Consequently, summoning order dated 16.09.2016 (Annexure P-10) qua Savita Vasesi is not justified. Accordingly, petition bearing CRM-M-41704-2018 filed by petitioner Savita Vasesi is accepted and complaint filed against her (Annexure P-6) along with summoning order dated 16.09.2016 (Annexure P-10) stands quashed.



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7. Petitioner Shiv Kumar Vasesi in CRM-M-33091-2019 also filed petition for quashing of aforesaid complaint as well as summoning order. He is one of the beneficiary of unregistered Will dated 07.12.2013. He has relied upon this Will while contesting civil suit seeking partition of aforesaid property. As per record, there is finding of Civil Court holding said Will as forged and fabricated document and as per arguments advanced by learned counsel for parties, appeal preferred by petitioner Shiv Kumar Vasesi was also dismissed, whereas RSA is still pending. Summoning order dated 16.09.2016 has been passed qua petitioner Shiv Kumar Vasesi and non-petitioners D.K. Jain and Jasbir Bakshi, who are marginal witnesses of aforesaid Will. Considering specific allegations, I do not find a fit case for quashing of complaint (Annexure P-6) and summoning order dated 16.09.2016 (Annexure P-10) qua Shiv Kumar Vasesi. Petition bearing CRM-M-33091-2019 filed by petitioner Shiv Kumar Vasesi is accordingly, dismissed.

8. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

23.09.2024*lalit***(AMARJOT BHATTI)
JUDGE**

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No