



2024:DHC:6298



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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RESERVED ON -10.07.2024
PRONOUNCED ON -20.08.2024+ **CRL.M.C. 4158/2018, CRL.M.A. 30185/2018****ANIL RASTOGI & ORS.**

.....Petitioner

Through: Mr. Vishal Bhatnagar, Mr. Latawalia,
Ms. Reena Khunjer, Mr. Shakeel
Ahmed, Ms. Rani Yadav, Advs. with
petitioners.
Mr. Harkirat Singh, Adv.

versus

THE STATE

.....Respondent

Through: Mr. Satish Kumar, APP with Ms.
Shruti Kapur, Ms. Rajeshwari, Ms.
Ayesha Sen Choudhury, Mr. Avnish
Prakhar, Advs. For State and SI
Ramavtar, PS Hauz Khas.
Mr. Sanjiv Bahl, Ms. Apoorva Bahl,
Advs. for R-2.+ **CRL.REV.P. 157/2018****NARENDRA MEHTA @ NAREN MEHTA**

.....Petitioner

Through: Mr. Sanjiv Bahl, Ms. Apoorva Bahl,
Advs.

versus

STATE & ORS.

.....Respondents

Through: Mr. Satish Kumar, APP with Ms.
Shruti Kapur, Ms. Rajeshwari, Ms.
Ayesha Sen Choudhury, Mr. Avnish
Prakhar, Advs. For State and SI
Ramavtar, PS Hauz Khas.



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Mr. Satinder Singh Mathur, Mr.
Utkarsh Vats, Mr. Saurabh Pandey,
Advts. for R-2 and 3.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :

CRL.M.C. 4158/2018 and CRL.REV.P. 157/2018

1. The petition bearing no. Crl.M.C. 4158/2018 has been filed seeking setting aside of the order dated 26.09.2017 whereby the learned Trial Court has ordered for framing of the charge against Anil Rastogi and Jugal Kishore Gupta for the offence under 467/471/120B of IPC and order dated 11.04.2018 whereby the revision against the framing of charges was dismissed. Further, the revision petition bearing no Crl.Rev.P.157/2018 has been filed by the complainant Narendra Mehta @ Naren Mehta seeking set aside of the order dated 10.01.2018 whereby the Ld. ASJ allowed the revision petition of Sh. Anil Rakheja and Ritu Rakheja and discharged them of the offence punishable under Section 120-B and 467/471 of IPC. Both the petitions arise from the same FIR bearing No. 441/2013 registered under Section 467/471 read with Section 120-B of IPC at Police Station Hauz Khas. The learned Trial Court has ordered for framing of charges against the petitioners in CRL.M.C. 4158/2018 and against respondents in CRL.REV.P, 157/2018.
2. Briefly stated that the case of the prosecution is that an FIR bearing No.



441/2013 under Section 120B/467/468/471 IPC was lodged by complainant Narendra Mehta @ Naren Mehta against Anil Rakheja, Smt. Ritu Rakheja, Smt. Shashi Thareja, Sh. Navneet Thareja, Anil Rastogi, and Jugal Kishore Gupta alleging therein that a forged Will dated 18.01.2011 of late Sh. P.D.Mehta in respect of property bearing no.Y-75, Hauz Khas, New Delhi-16 has been created. The complainant alleged that the property bearing No.Y-75, Hauz Khas, New Delhi-16 was owned by late Sh. P.D.Mehta who died on 14.11.2011. The complainant Sh. Narendra Mehta is the only son of the late Sh. P.D. Mehta. Smt Karuna Makkar, complainant No.2 herein and Smt. Ritu Rakheja and Smt. Sahshi Thareja are the daughters of the late Sh. P.D.Mehta. The other alleged persons Sh. Anil Thareja and Sh. Navenet Thareja are the husbands of Smt. Ritu Rakheja and Smt. Shashi Thareja. Sh. Anil Rastogi and Sh. Jugal Kishore Gupta were stated to be the attesting witness on the alleged forged Will dated 18.01.2011.

3. The complainant alleged that late Sh. P.D. Mehta had executed a registered Will dated 06.12.1991 by virtue of which above said property Y-75, Hauz Khas, New Delhi was bequeathed in favour of his wife Smt. Sumitra Mehta and after her death to Sh. Narender Mehta. The mother of the complainant Smt. Sumitra Mehta had predeceased. Subsequently, late Sh. P.D. Mehta executed another registered Will dated 29.11.2005 whereby he bequeathed the property Y-75, Hauz Khas, New Delhi in favour of complainant Sh. Narender Mehta@Naren Mehta. The complainant further alleged that after the death of Late Sh. P.D. Mehta, two daughters Smt. Ritu Thareja and



Smt. Shahsi Thareja started creating disputes and claiming right in the property despite the fact that they were informed by the complainant that late Sh. P.D. Mehta had executed a last and final Will dated 29.11.2005 by virtue of which the property was bequeathed in favour of the complainant. The complainant further alleged that Smt Ritu Rakheja filed a suit for partition CS(OS) 402/2012 titled as Ritu Rakheja v. Naren Mehta @Narneder Mehta and Ors. claiming that Sh. P.D. Mehta died intestate and claimed 1/4 share in the above said property as well as other assets left behind the Sh. P.D. Mehta. In the said suit, the complainants and Smt. Shahi Thareja have been arrayed as defendants.

4. The complainants in written statement asserted that late Sh. P.D. Mehta had executed his last registered Will dated 29.11.2005. However, in the said suit, Smt. Shahsi Thareja filed the written statement claiming that late Sh. P.D. Mehta had executed a Will dated 18.01.2011 by virtue of which the property was bequeathed in favour of all his four children. However, the original of said Will was not filed and only photocopy with unclear photo and Oath Commissioner details were placed on the record. Smt. Shahi Thareja allegedly took a false plea that the original of the said Will is with the complainant Sh.Narender Mehta @Naren Mehta. The complainant alleged that Smt. Ritu Rakheja and Smt. Shahi Rakheja alongwith their respective husbands and attesting witnesses have committed the offence of forgery and cheating by fabricating a Will dated 18.01.2011 of late Sh. P.D.Mehta.
5. The police after investigation filed the charge sheet against Anil Rakheja, Ritu Rakheja, Navneet Rakheja, Shashi Rakheja and the



attesting witnesses. In the chargesheet, the investigating agency alleged that during the course of investigation Smt. Karuna Makkar, complainant No.2 was examined wherein she also alleged the forging of Will dated 18.01.2011 by the alleged persons and reiterated that her father had executed only two Wills dated 06.12.1991 and 29.11.2005. The complainant had also placed the forensic report from the Truth labs wherein it was concluded that questioned photocopy Will is not genuine document and is forged and fabricated. The investigating agency concluded that the Anil Rakheja, Ritu Rakheja, Navneet Thareja, Shashi Thareja had hatched a conspiracy to usurp the property of late Sh. P.D.Mehta. As per chargesheet, Navneet Thareja and Shashi Thareja did not join the investigation.

6. The photocopies of the alleged forged Will 18.01.2011 were sent to the FSL. The FSL report *inter alia* concluded that as per the principle of hand writing (signatures) identification, no two signatures of the same persons can be exactly alike and identical in respect of size, dimensions and relative locations of corresponding characters. It was further *inter alia* stated that the natural variations are bound to occur in any of the two genuine signatures of the same person and if two signatures found exactly alike and identical in size, dimension and relative location of characters and also superimposing over each other, then there is an indication regarding forged nature of the documents, however same could be verified only after examining the original will. It is pertinent to mention that the alleged original will never came to the light of the day.
7. Learned Trial Court vide order dated 26.09.2017, on the basis of material held there is sufficient material to frame the charge against



the accused persons under Section 467/471 read with Section 120B IPC. The order on charge was challenged by Anil Rastogi and Jugal Kishore Gupta before the learned Sessions Court vide Crl. Rev. No.28/2018. Learned sessions Court dismissed the revision petition vide order dated 11.04.2018. The framing of charge was also challenged by remaining four alleged persons before the learned Sessions Court vide Crl. Rev. No. 53/2017 (359/2017). Learned Sessions Court inter alia held that no prima facie case is made out against Anil Rakheja and Ritu Rakheja. However, learned Sessions Court upheld that framing of charges against Navenet Thareja and Smt. Shashi Thareja. Aggreived of this the complainant Narender Mehta filed the revision petition No. 157/2018 before this court.

8. Sh. Vishal Bhatnagar, Advocate, learned counsel for Anil Rastogi and Jugal Kishore Gupta submits that in the above said FIR there are no allegations against Anil Rastogi and Jugal Kishore Gupta except that they are attesting witnesses to the alleged Will dated 18.01.2011. Learned counsel submits that there are no allegations of conspiracy with the beneficiaries of the will and admittedly, the attesting witnesses are not the beneficiaries of the alleged Will. Learned counsel further submitted that as per the FSL report no conclusive evidence has been found by the prosecution against Anil Rastogi and Jugal Kishore Gupta. It has been submitted that it is an admitted case that the original Will dated 18.01.2011 has not seen the light of the day. The order dated 26.09.2017 and the order of revisional Court dated 1.04.2018 are non speaking order and bereft of any of reasoning. Learned counsel submitted that the present case revolves around the validity of the Will



which is already under question in the Civil Suit No. CS(OS) No. 402/2012 and therefore the present prosecution against the Anil Rastogi and Jugal Kishore Gupta cannot continue. Learned counsel for Anil Rakheja and Ritu Rakheja submitted that the order discharging them is correct and does not contain any infirmity and has been passed in accordance with law after considering the facts and merits of the case at hand.

9. Sh. Sanjeev Behl, Advocate, learned counsel for the complainant has submitted that the Sh. Anil Rastogi did not identify the signature on the forged Will dated 18.01.2011 during the investigation and remained evasive saying that he can provide further information only if the original Will is shown. Learned counsel further submitted that Sh. Jugal Kishore Gupta simply stated that he did not know any person namely Sh. P.D. Mehta and even he did not confirm or deny the signatures on the photocopy of the Will dated 18.01.2011 on the pretext that in the absence of original he cannot confirm the signatures. Learned counsel submitted that alleged attesting witnesses herein had entered into conspiracy and committed forgery for the benefit of other accused persons to deny ownership of complainant in relation to the assets of late Sh. P.D. Mehta. Learned counsel submits that the learned M.M. and learned Sessions Court have passed well-reasoned orders and there is no need to interfere.
10. Learned counsel for the complaint has also submitted that Anil Rakheja and Ritu Rakheja have wrongly been discharged from the alleged offences as they are the key conspirators who will be benefitted from the will dated 18.01.2011. Learned counsel further submits that



Smt.Shashi Thareja lifted the signature of Sh. P.D. Mehta from the documents filed in the suit by Smt. Ritu Rakheja. It has been submitted that the original Will dated 18.01.2011 has not been produced. It has further been submitted that in the Will dated 18.01.2011 the name of the complainant has wrongly been spelled as Narendra Mehta. It has been submitted that in fact, Anil Rakheja have always been writing the name of the complainant as Narendra Mehta. Learned counsel submits that Anil Rakheja has been shown as executor of the alleged Will dated 18.01.2011. It has further been submitted that Ritu Rakheja and other legal heirs are direct beneficiaries. Learned counsel also submitted that the learned Revisional Court has fallen into grave error by discharging the accused persons despite the truth lab report and FSL reports.

11. Learned APP for the State submitted that investigating agency has conducted the investigation in accordance with the law and has filed the chargeheet. Learned APP submitted that the learned MM and learned Sessions Court has passed the well-reasoned order in accordance with the law.
12. It is a well settled law that the power granted to the High Courts under Section 482 Cr.PC is an exceptional power. Such power can only be used to prevent abuse of the process of law before any court or otherwise to secure the ends of justice. It has been held in the catena of the judgments that this power can be exercised, only if the Court finds that the continuation of the proceedings would only amount an abuse of process of the law.
13. Before proceeding further, it is also necessary to advert to law regarding the framing of charge. The present case is warrant case



triable by the magistrate. Section 239 of Cr.P.C. provides that a person shall be discharged if the magistrate considers the charges against the accused to be groundless. Similarly, under Section 240 of Cr.P.C., the charges can be framed against the accused persons if there are grounds for presuming that the accused has committed an offence Tribal under this chapter. The law regarding framing of charges is also very well settled. The Court at this stage is only required to see the prima facie case. The Court cannot conduct a mini trial at this stage. However, the charges are not to be framed at the mere asking of prosecution. The Court has to sift and weigh the evidence for the limited purpose to ascertain whether the charges against the accused are groundless or there are grounds for presuming that the accused has committed an offence. The charges cannot be framed merely on the suspicion. It is settled proposition that there has to be grave suspicion. Similarly, if two plausible views are possible, the view favourable to the accused has to be taken. In the present case, the allegations against the Anil Rastogi and Sh. Jugal Kishore Gupta are that they are attesting witness to the forged Will dated 18.01.2011. It is an admitted case that Smt. Ritu Rakheja has filed a civil Suit asserting the execution of Will in her favour including the other legal heirs.

14. The question which needs to be answered is that whether the validity of Will which is in question in the civil proceedings, the criminal prosecution for such can continue in the criminal Court. A similar question came up before the Apex Court in *Sardool Singh and Another v. Smt. Nasib Kaur*, 1987 SCC CRI 672; wherein it was inter alia held as under:



“2. A civil suit between the parties is pending wherein the contention of the respondent is that no will was executed whereas the contention of the appellants is that a will has been executed by the testator. A case for grant of probate is also pending in the court of learned District Judge, Rampur. The civil court is therefore seized of the question as regards the validity of the will. The matter is sub judice in the aforesaid two cases in civil courts. At this juncture the respondent cannot therefore be permitted to institute a criminal prosecution on the allegation that the will is a forged one. That question will have to be decided by the civil court after recording the evidence and hearing the parties in accordance with law. It would not be proper to permit the respondent to prosecute the appellants on this allegation when the validity of the will is being tested before a civil court. We, therefore, allow the appeal, set aside the order of the High Court, and quash the criminal proceedings pending in the Court of the Judicial Magistrate, First Class, Chandigarh in the case entitled Smt Nasib Kaur v. Sardool Singh. This will not come in the way of instituting appropriate proceedings in future in case the civil court comes to the conclusion that the will is a forged one. We of course refrain from expressing any opinion as regards genuineness or otherwise of the Will in question as there is no occasion to do so and the question is wide open before the lower courts”

(Emphasis Supplied)

15. This judgment was followed by the Supreme Court in ***M.Srikanth v. State of Telangana and Another***, 2019 10 SCC 373. In this case also a Will is under challenge in civil proceedings. In this case also while the civil proceedings are pending, the criminal prosecution was initiated against the attesting witnesses. It is a settled proposition that if the issues raised reflect a civil dispute with respect to inheritance amongst the legal heirs and is pending before a Civil Court, it would not be



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proper to permit continuation of criminal proceeding.

16. In view of the above discussions and findings, the Crl.M.C.4158/2018 is allowed and orders dated 26.09.2017 and 11.04.2018 are set aside and the accused persons namely Anil Rastogi and Jugal Kishore Gupta are discharged from the offence under section 467/471/120B of IPC. Further the Crl. Rev.P. No. 157/2018 is also dismissed. However, the complainant may initiate appropriate proceedings if the Civil Court comes to the conclusion that the Will dated 18.01.2011 is a forged one. It is pertinent to mention that this court has not gone into the question of genuineness of Will, as its pending consideration before this court in CS(OS) 402/2012. No expression made herein shall tantamount to be an expression on the merits of the case.
17. Both the petitions along with pending applications stand disposed of.

DINESH KUMAR SHARMA, J

AUGUST 20, 2024

Pallavi/HT