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Court : Mumbai Nagpur

Decided On : Jan-13-2015

Judge : S.B. Shukre

Appeal No. : Criminal Writ Petition No. 31 of 2014

Appellant : Dada

Respondent : Tarabai

Judgement :

Oral Judgment:

1. Heard.

2. Rule, made returnable forthwith. Heard finally by consent of the parties.

3. By this petition the petitioner is challenging the order of issuance of process and a direction for framing of charge against him under Sections 420, 463 and 464 of the Indian Penal Code in Criminal Complaint Case No. 749 of 2009 passed by Judicial Magistrate, First Class, Court No.6, Nagpur confirmed by Additional Sessions Judge, Nagpur in Criminal Revision Application No.83 of 2013 by his order passed on 29/10/2013.

4. The sum and substance of the allegations made in the complaint filed by the respondent against the petitioner is that on the pretext of mutating the names of all

the legal heir, the petitioner and the respondent being the real brother and sister together with two more sisters, who had inherited the agricultural property belonging to the father, had obtained signature of the respondent on some blank documents on 26/9/2001 and later on it was revealed in the year 2009 that the blank documents on which signature of the respondent was obtained through misrepresentation and fraud was actually converted into a relinquishment deed. It was submitted that since the respondent never intended to relinquish her share in the agricultural field, the use of blank document bearing her signature by the petitioner for creating relinquishment deed amounted to cheating of the respondent. Considering these allegations, verified on oath, learned Magistrate issued process on 15/4/2009 against the petitioner and thereafter, proceeded to record evidence before charge. On 18/01/2013 learned Magistrate directed that charge be framed against the petitioner under Sections 420, 463 and 464 of the Indian Penal Code. Both the orders dated 15/4/2009 and 18/01/2013 came to be challenged by filing Criminal Revision Application before the Sessions Court, which was dismissed by the Court of Additional Sessions Judge by an order passed on 29/10/2013, thereby confirming the orders dated 15/4/2009 and 18/01/2013 passed by the learned Magistrate. Being aggrieved by the same, the petitioner is before this Court.

5. Learned Counsel for the petitioner submits that subsequent to filing of the complaint, which was filed on or about 18/02/2009, the respondent had also filed a civil suit bearing Special Civil Suit No. 341 of 2009 on or about 30/3/2009 claiming reliefs of partition and separate possession of share of the respondent in the agricultural field. He further submits that the basis of this suit is the allegations in the complaint and, therefore, relying upon the law laid down by this Court in the case of Prabhakar Vithal Nalwade Vs. Prabhu Khemchand Karamchandani reported in **1998(3) Mh.L.J. 845**, the complaint itself is not maintainable and as such the order of issuance of process and also subsequent order of framing of charge deserve to be quashed and set aside and the complaint deserves to be dismissed.

6. According to learned Counsel for the respondent, only because subsequently the civil suit has been filed in respect of the field about which, there is also a

criminal complaint pending, it would not be proper to dismiss the complaint. He also submits that the reliefs claimed in the civil suit are entirely different than what has been sought for in the complaint filed by the respondent. Learned Counsel for the respondent further submits that accepting the allegations of the respondent as they are, one would find that prima facie case has been made out as alleged against the petitioner and, therefore, learned Magistrate has rightly directed issuance of process and also framed the charge for offences punishable under Sections 420, 463 and 464 of the Indian Penal Code. In support, he places reliance upon the cases of Vijay Kumar Trivedi Vs. State of U.P. and another **2011(1) Cr. L. J. 120** and Indrajitsingh Jogindersingh Vs. State of Maharashtra **2012 (4) AIR Bom R 527**.

7. Upon consideration of the complaint and also the facts admitted by the parties, I am of the view that there is great substance in the argument advanced on behalf of the petitioner and there is no merit in the argument canvassed before me on behalf of the respondent.

8. In the complaint, the respondent has alleged that her signature has been obtained upon a blank paper, later on fraudulently made into a relinquishment deed, by making misrepresentation to the respondent that her signature was being taken on the paper for the purpose of submitting mutation form so that together with other legal heirs, her name would also be shown as owner of the agricultural field in the revenue records. In other words, in the complaint, the respondent has admitted her signature appearing on the disputed document. There is no dispute about the fact that subsequently on or about 30/3/2009, civil suit bearing Special Civil Suit No. 341 of 2009 has been preferred by the respondent and it has been filed against the petitioner as defendant No. 1 and two of her sisters namely Nirmalabai and Hirabai as defendant Nos. 2 and 3. In this suit, the respondent-complainant has averred that the signature appearing on the disputed document i.e. relinquishment deed is false. To put it differently, in this suit she is taking a stand that the relinquishment deed does not bear her signature and it has been forged by the petitioner. This stand is in contradiction to what she has alleged in the complaint and, therefore, it can be seen that the complainant herself is not sure as to whether the relinquishment deed had been really obtained by the

complainant through misrepresentation and fraud.

9. It is not in dispute that the relinquishment deed in question is a registered document and, therefore, there would be a prima facie presumption that it has been duly executed by the executant thereof. A useful reference in this regard may be made to observations of Hon'ble Supreme Court appearing in para 27 of it's judgment in the case of VishwanathBapurao Sabale Vs. Shalinibai Nagappa Sabale and Ors., C. A. Nos. 1782-1783 of 2009 decided on 23/3/2009. This prima facie presumption is rebuttable and therefore it could have been prima facie shown by the complainant, i.e. respondent by producing some additional evidence on record that the signature on the relinquishment deed was obtained through fraud and misrepresentation by the petitioner. No such evidence has been produced on record by the respondent. Learned Counsel for the respondent submits that further opportunity should be given to the respondent for leading additional evidence in this regard and this would be in the nature of evidence of sisters of the parties.

10. I do not think that giving of any such further opportunity is going to be useful in this case as admittedly, the sisters of the parties namely Nirmalabai and Hirabai have filed their written statement in Special Civil Suit No. 341 of 2009 wherein both of them have clearly admitted the fact that relinquishment deed was signed not only by both of them but also by the complainant-respondent herself and that it was a voluntary execution of the document relinquishing their rights in the suit property in favour of their brother, the petitioner, in the presence of attesting witnesses before the SubRegistrar, Nagpur.

11. Such being the nature of contentions of the plaintiff and also the evidence available on record, the only inference that can be drawn in this case would be that the respondent has failed to make out any prima facie case of cheating against the petitioner. Not only that, there is also a civil suit subsequently filed by the respondent against the petitioner and two other sisters, which is based upon same set of facts and, therefore, as held in the case of Prabhakar(supra), it will be another ground for holding that no prima facie case is made out by the respondent against the petitioner in the matter. For this reason only I find that the cases relied upon by the respondent namely the case of IndrajeetSingh and the case of Vijay

Kumar, cited supra , would render no assistance to him. In the case of IndrajeetSingh, the material collected and present on record did show involvement of the accused in the crime, however, such is not the case in the instant matter. In the case of Vijay Kumar, the complaint related to commercial transaction of breach was complained for which civil remedy was additionally available and the breach of the contract, in the facts and circumstances peculiar to that case, itself served as a separate ground for constituting an offence, whereas, in the instant matter, the foundation of the civil suit subsequently filed is the same and not only that there is also a contradictory stand taken in the subsequent civil suit as regards the signature on the disputed document and, therefore, the ratio of the case of Vijay Kumar would be of no help to the respondent and rather the view taken in the case of Prabhakar(supra) would be of great help to the case of the petitioner, which view commends to me as well.

12. In this view of the matter, I find no prima facie case having been made out by the complainant, i.e. the respondent against the petitioner, the complaint deserves to be dismissed by allowing this petition.

The writ petition is allowed.

Impugned orders dated 15/4/2009 and 18/01/2013 passed by the Court of Judicial Magistrate, First Class, Nagpur in Criminal Complaint Case No.749 of 2009 and also order dated 29/10/2013 passed by learned Additional Sessions Judge, Nagpur in Criminal Revision No. 83 of 2013 are hereby quashed and set aside and the complaint stands dismissed.

Rule is made absolute in the above terms.

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