

Sharda Devi Vs. the State of Bihar and anr.

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Court : Patna

Decided On : Jul-07-2005

Judge : C.M. Prasad, J.

Acts : Indian Penal Code (IPC) - Sections 120B, 419, 420, 465, 467, 468 and 471;
[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 195, 195(1), 340 and 482;
[Indian Succession Act, 1925](#) - Sections 276

Appeal No. : Cr. Misc. No. 10296 of 2004

Appellant : Sharda Devi

Respondent : The State of Bihar and anr.

Advocate for Def. : Arun Kumar Singh, APP, Md. Salauddin Khan and Satgya Prakash Bihari, Advs. for opposite party 2

Advocate for Pet/Ap. : Krishna Kant Singh, Shyam Kant Singh and Akshay Lal Pandit, Advs.

Disposition : Application allowed

Prior history : C.M. Prasad, J. 1. The petitioner has filed this petition under Section 482 of the Code of Criminal Procedure (in short, referred to as 'the Code') with a prayer to quash the First Information Report of Chapra Town P.S. Case No. 1 of 2004 dated 2nd January 2004 which was instituted for offences under Sections 419, 420, 467, 468, 471 and 120B of the Indian Penal Code against the

petitioner and six others. The complainant-informant Birendra Prasad filed Complaint Case No. 1767 of 2003 for the

Judgement :

C.M. Prasad, J.

1. The petitioner has filed this petition under Section 482 of the Code of Criminal Procedure (in short, referred to as 'the Code') with a prayer to quash the First Information Report of Chapra Town P.S. Case No. 1 of 2004 dated 2nd January 2004 which was instituted for offences under Sections 419, 420, 467, 468, 471 and 120B of the Indian Penal Code against the petitioner and six others. The complainant-informant Birendra Prasad filed Complaint Case No. 1767 of 2003 for the aforesaid offences against the petitioner and six others and the complaint petition was sent by the learned Chief Judicial Magistrate, Chapra to Police for institution of FIR and, accordingly, the FIR has been instituted and the Police is conducting investigation into the case.

2. The allegation as levelled by the complainant/informant in the said complaint petition is that one of the accused Jitendra Prasad (who is not petitioner), the husband of the petitioner Sharda Devi has filed Title Suit No. 66 of 2003 against the complainant/informant (O.P. No. 2) and the Executive Officer of Municipality, Chapra in the. Court of Munsif-I, Chapra and he (the complainant) received summons in that suit. It was further alleged that on receiving summons the complainant appeared in that suit and on verification of the record through his counsel, he learnt that accused Jitendra Prasad has filed in that suit photo copy of a forged Will dated 1st June 1988 executed by Kishori Devi wife of late Jagannath Sah in. favour of the petitioner Sharda Devi with respect to the land appertaining to Holding No. 193, Ward No. 20, Circle No. 6 within Chapra Municipality and that other accused persons, namely, Rajendra Prasad, Janardan Prasad and Nand Kumar stood as witness on the Will and accused Ram Nagina Rai (since dead) was the scribe of the Will. The complainant further alleged that Kishori Devi was his aunt and that she had never executed such Will nor she had given her thumb impression on any such Will. It was further stated in the complaint petition that

accused Jitendra Prasad had appeared in Chapra Municipality Mutation Case No. 182 of 2000/2001 and he had filed one objection petition dated 21st June 2000 and that he had not disclosed anything in that objection petition about the Will hence, the complainant suspected the accused Jitendra Prasad had forged the Will between 21st October, 2000 to 21st June 2002. Hence, the complainant further alleged that the accused persons had forged the Will and had filed the same in the said title suit with a purpose to grab the land under the Will. Thus, the complainant/informant alleged the Will as filed by complainant's husband Jitendra Prasad in the said title suit being forged and fabricated only on the ground that on perusal of the photo copy of the Will, he found that it was forged one and the ground for thinking the Will being forged and fabricated was also that in the previous mutation proceeding, petitioner's husband Jitendra Prasad had appeared and had filed objection but he had not stated in his objection petition about the Will. Besides these, no other ground has been mentioned in the complaint petition for alleging the Will forged and fabricated one. Alongwith his petition, the petitioner filed Annexure-3 which is copy of plaint under probate case No. 22 of 2003 under Section 276 of the [Indian Succession Act, 1925](#), filed by the petitioner Sharda Devi in the Court of District Judge, Saran at Chapra praying for grant of letter of administration with respect to the property mentioned in Schedule-A of the plaint. Thus, through Annexure-3 it appears that the petitioner Sharda Devi had filed the said probate case for grant of letter of administration with respect to the properties under the Will.

3. The learned counsel for the petitioner argued that petitioner's husband has already filed the said title suit in which the complainant has appeared. It was further submitted that the petitioner has also filed the said probate case (Annexure-3) for issuance of letter of administration and that in that case also the complainant has appeared. The petitioner asserted that the Will on the basis of which the said title suit and the said probate case have been filed is genuine and that the complainant has also appeared in those cases and that the matter in sub-judice and the Will is under the scrutiny of the Court of competent jurisdiction where the title suit and the probate case have been filed and that the petitioner is ready to prove the Will and establish her claim before those Courts according to law. It was further argued that the complainant can raise his objections on the Will

in the title suit and the probate case. But, the learned counsel continued to submit that, the complainant filed the complaint petition which forms the basis of the FIR against the beneficiary, Sharda Devi and her family members, witnesses and the scribe of the Will with false allegation based on suspicion only as a device to put pressure in the title suit and the probate case filed by the petitioner and her husband. The further contention of the learned counsel was that in the complaint petition, there is no specific material to show the commission of the offence by any specific person in any specific manner at any particular time, but there is general and vague allegation based on suspicion only that on perusal of the photo copy of the Will it appeared to be forged and fabricated and that in earlier mutation proceeding when the petitioner's husband had filed objection, he had not discussed anything about the Will in that objection petition.

The complainant/informant has filed a counter affidavit and in the counter affidavit he has stated that in the mutation proceeding, in which the petitioner's husband had filed objection petition he had stated that he was living in that house for about 40 years but in para 6 of the petition for quashing, the petitioner claims to be residing in that house for a period exceeding 30 years. But this is not a serious contradiction to be considered in support of the complainant's case at this stage. In Para 17 of the counter affidavit, the complainant/informant (O.P. No. 2) has mentioned that he had purchased the house through sale-deed from one daughter of late Jagannath Prasad, the recorded tenant. Learned counsel for the petitioner argued that the complainant (O.P. No. 2) claims the house through purchase from one of the issues i.e. daughter of the testator whereas the petitioner claims to have obtained the property through the Will and that on the basis of the Will, the said title suit and the probate case have been filed by the petitioner and her husband and that the complainant has already appeared in the title suit and the probate case. It was further submitted that in the probate case not only the complainant (O.P. No. 2) has appeared but other heirs of the testator have also appeared and it is being tried in the Court of competent jurisdiction where the matter is sub-judice and the Will is under scrutiny of the Court and the petitioner is ready to prove the Will. The learned counsel for the petitioner continued to submit that the complainant has filed the complaint simply on suspicion and that there is nothing specific in the complaint petition to show a prima facie case as alleged by the

complainant. It was further argued that the complainant has filed this case falsely as pressure tactics to put pressure on the petitioner, her family members and the witnesses to the Will so that they can be restrained from appearing and proving the truth in the said title suit and the probate case. Petitioner's counsel submitted that the complaint has been filed for offences under Section 471 and other Sections of the IPC but the offence is mainly under Section 471, IPC only i.e. the offence of using as genuine a forged document. He submitted that the allegation of the complainant/informant is that the petitioner and her husband have filed the Will in the said title suit and probate case and that a forged Will has been filed as a genuine one.

4. The learned counsel for the petitioner referred to Section 195(b)(i) and (ii) of the Code which provides that no Court shall take cognizance of any offence described under Section 471, IPC except on complaint in writing of the public servant concerned or some other public servant to whom he is administratively subordinate. The learned counsel also referred to Section 340 of the Code which provides that when upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an enquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195 of the Code which appears to have been committed for or in relation to a proceeding in that Court or as the case may be in respect of a document produced or given in evidence in a proceeding in that Court, such Court may after such preliminary enquiry, if any, as it thinks necessary make a complaint thereof in writing. The learned counsel continued to argue that according to the complainant/informant in petitioner and her husband have committed the offence of filing a forged Will as genuine in the said title suit or probate case. Hence, it was further argued that Section 195 of the Code is applicable in this case and that no Court can take cognizance of such offence except without the written complaint of that Court before which the document has been filed and the offence is said to have been committed. The learned counsel also submitted that if the complainant feels aggrieved on the basis of suspicion only, as mentioned in the complaint petition, he can file a petition before the Courts where the title suit and the probate case are being tried and the Courts on being satisfied after enquiry under Section 340 of the Court can file a complaint under Section 195 of the Code. The petitioner's

counsel lastly submitted that there is nothing specific in the complaint petition to show the commission of the offence but the allegation of the complainant is based on suspicion only.

5. In support of his contention, the learned counsel for the petitioner cited the case of Smt. Manju Gupta v, Lt. Col. M.S. Paintal, : 1982 CriLJ1393 . It was case relating to Rent Control proceeding. The allegation was that some forged rent receipts were filed in that proceeding. On the basis of the allegations, the Magistrate issued process against the appellant Manju Gupta. The Hon'ble Supreme Court considered that no specific allegation or overt act had been scribed to the appellant in the matter of commission of the offence of using forged document as genuine in proceeding before the rent controller. In these circumstances, the Hon'ble Supreme Court held that it was a clear case in which no such case was made out against the appellant and, therefore, the process issued by the Metropolitan Magistrate was quashed.

6. Petitioner's counsel further cited the case of Paras Ram v. State of Haryana, 1995 Cr LJ 1603. It was a case in which application under Sections 340 and 195 of the Code had been filed before the Court and the Court without making any enquiry into the offence alleged, sent the application to Police for registration of case and accordingly, an FIR was registered. In that case, the Punjab and Haryana High Court held that Section 340 of the Code show that when the Court thinks it expedient in the interest of justice that an enquiry should be made into any offence referred to in clause (b), sub-section (1) of Section 195 of the Code and that offence appears to have been committed in relation to proceedings in that Court, the Court may after such preliminary enquiry, if any, make a complaint thereof in writing and that on receipt of application under Sections 340 and 195 of the Code from the complainant, the only course open to the Court is to make an enquiry into the offence alleged to have been committed and after holding preliminary enquiry if it was found that the offence had been committed, to make a complaint thereof in writing to the Magistrate of the 1st Class having jurisdiction and that the application could not be sent to Police for registration of a case and investigation and, therefore, the FIR registered in that case was in derogation of the provisions of Section 340 of the Code, hence, the FIR was quashed.

7. The learned counsel for the petitioner submitted that in this case the complaint petition which is the basis of the FIR does not mention any specific material to show the commission of the offence at the hands of petitioner. It was further argued that the complainant and simply based his suspicion over the documents i.e Will filed by the petitioner and her husband in the said title suit and the probate case and that on the basis of that suspicion only the FIR has been instituted. Hence, it was further argued that the institution of the FIR and the investigation going on on the basis of such FIR is an abuse of the process of the Court. It was also argued that the complainant alleges that a forged Will has been filed as genuine in the title suit that the matter is already sub-judice before a Court of competent jurisdiction. Learned counsel for the petitioner also submitted that in the probate case filed by the petitioner, the complainant and other heir of the testator have already appeared. The further submission was that if the complainant-binformant has any grievance he can file a petition under Section 340 of the Code before the Court concerned which can itself a file complaint, if satisfied on an enquiry that a forged document has been filed as genuine before it. But so far the complaint and the FIR is concerned, submission of the learned counsel was that there is no specific material in the complaint/FIR to show prima facie commission of the offence at the hands of oetitioner. The submission of the learned counsel appears to carry substantial reasons.

8. Learned counsel for the O.P. No. 2 cited the case of Kamla Devi Agrawal v. State of West Bengal and Ors., : 2001 CriLJ4733 . In that case an order of injunction had been obtained from a Court of law on the ground that the partnership of which the appellant Kamla Devi Agarwal was a partner stood dissolved on 16th November, 1974. The appellant Kamla Devi Agarwal allege that she had not signed any deed of dissolution of partnership and she alleged that her signature on such deed of dissolution as filed before the Court for obtaining injunction order was forged. The appellant Kamla Devi Agarwal filed complaint against 4 accused persons alleging that they brought into existence a forged deed of dissolution for their personal gain and to the detriment of the partners of the Firm. She also referred to a number of circumstances in her complaint to show that a forgery had been committed by the accused. After filing the complaint and her examination on S.A. she also appeared before the Magistrate along with 3

witnesses out of whom one was hand-writing expert. After recording the statement of witnesses the Magistrate vide his order dated 5th April, 2000 found that appellant had made out a prima facie case under Sections 465, 468, 471 and 120B of the Indian Penal Code against the accused persons and, therefore, issued summons against them. In the circumstances of that case, the Hon'ble Supreme Court held that a prima facie case was made out and the order of the learned Magistrate for issuance of the process against the accused was upheld. The Supreme Court also held that pendency of civil action in different Courts, even-though higher in status and authority cannot be made a basis for quashing of the criminal proceedings when a prima facie case was made out. On the basis of what has been held above by the Hon'ble Supreme Court, learned counsel for the O.P. No. 2 argued that the institution of the FIR on the basis of the complaint filed by the complainant-informant is justified but this submission of the learned counsel is not acceptable. In the above cited case, the complainant, whose signature had been forged had herself filed the complaint alleging that her signature had been forged and that she had also mentioned various circumstances showing the commission of the offence and further that she had also produced the three witnesses, including a witness who was hand-writing expert and on considering those materials and the evidence of witnesses the Magistrate had found a prima facie case and he had issued process against the accused. But in the instant case, there is nothing specific in the complaint petition to show the commission of the alleged offence at the hands of the petitioner had that the testator who is said to be the maker of the Will has also not come forward to say that she had not executed any such Will and that her L.T.I. had been forged. Thus, the facts and circumstances of the case under the cited authority is quite different and it does not help the O.P. No. 2 in this case. O.P. No. 2 further cited the case of *Rajesh Bajaj v. State of NCT of Delhi and Ors.* reported in (1999) 3 SCC 459. The Apex Court held in that case that if averments in the complaint prima facie make out a case for investigation, the High Court cannot quash the complaint merely because of one of two ingredients of the offence have not been stated in detail. The learned counsel for the O.P. No. 2 argued that in the complaint petition, the complainant has alleged that the petitioner and other accused have filed a forged Will in the said title suit hence, according to him, a prima facie case is made out. Learned

counsel for the petitioner replied that on perusal of the complaint petition it appears that any specific instance or circumstance indicating the commission of the offence at the hands of the petitioner and making out a prima facie case against her has not been shown and the allegations in the complaint petition bases solely on suspicion.

9. On perusal of the complaint petition, I find substance in the submission of the petitioner's counsel. Thus, hearing I find that in the instant case, the O.P. No. 2 filed the complaint petition without mentioning any specific allegation or instance to show the commission of the offence at the hands of the petitioner making out a prima facie case against her. Therefore, I find that the learned Magistrate was not justified in sending the complaint for institution of the FIR. In such circumstances, I find that the institution of the FIR and the investigation being carried on the basis of it is an abuse of the process of the Court, hence, the FIR is fit to be quashed. Accordingly, the complaint as well as the FIR lodged on the basis of the complaint and the consequent investigation, so far as it relates to petitioner Sharda Devi are hereby quashed. In the result, this Criminal Misc. application is allowed.

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