

Shakuntala Devi Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Sep-16-2002

Reported in : 2003CriLJ687

Judge : U.S. Tripathi, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 1, 156(3) and 200

Appeal No. : Crl. Misc. Appln. No. 8137 of 2002

Appellant : Shakuntala Devi

Respondent : State of U.P. and ors.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : S.R. Singh and ;P.K. Singh, Advs.

Judgement :

ORDER

U.S. Tripathi, J.

1. This application under Section 482 Cr. P.C. has been filed for setting aside orders dated 29-7-2002 passed by VII Additional Sessions Judge, Allahabad and dated 8-11-2000 passed by Chief Judicial Magistrate, Allahabad and for directing the Court below to take cognizance on the application of applicant under Section

156(3) Cr. P.C. to direct the authority concerned to lodge report.

2. It appears that applicant moved an application before Special Chief Judicial Magistrate, Allahabad under Section 156(3) Cr. P.C. for direction to the police station George Town to register a case against opposite parties No. 2 to 4 under Sections 419, 420, 467 and 468 IPC with the allegation that. Jangilal Was maternal uncle executed a will dated 20-4-1986 in her favour in respect of plot No. 18/1 on which house No. 689/2/67 was situated since 1980. The name of the applicant was recorded in records of Nagar Nigam on basis of above will in the year 1989.

3. The applicant later on sold a portion of said house (82 square yards) in favour of opposite party No. 4 by executing sale deed dated 29-12-1993. The opposite parties No.2 to 4 prepared a forged will dated 9-3-1976 in the name of opposite party No.2 mother of opposite party No.3 allegedly executed by Jangilal in respect of entire area of plot in question. Jangilal was literate but will deed contained his thumb impression. The parentage of Jangilal was wrongly shown as Lalji in will deed while his father's name was Murli. Residence of Jangilal was also wrongly shown in the will deed. The opposite parties therefore committed offences punishable under Sections 419, 420, 467 and 468 IPC.

4. The learned Special Chief Judicial Magistrate on perusal of contents of above application found that date time and place of execution of alleged will deed have not been disclosed. The will deed had yet not been declared invalid or forged by a competent Court of law and therefore allegations of application did not disclose a cognizable offence. Accordingly, he rejected the application by order dated 8-11-2000.

5. Aggrieved with above order the applicant filed criminal revision No. 1579/2000, the Revisional Court issued notice to opposite parties No. 2 to 4 who appeared and filed counter affidavit alleging that applicant sold house No. 689 to Smt. Savita (opposite Party No.4) by executing a registered sale deed but did not deliver its possession to the transferee. Therefore Smt. Savita, the transferee, filed civil suit for eviction of applicant which is pending. Jangilal had executed a valid will deed in favour of Smt. Laxmi Devi (opposite party No.2). The applicant had also filed a civil

suit for declaration that she is exclusive owner of property in dispute and the case between parties was a case of purely civil nature.

6. The Revisional Court on hearing the learned counsel for the parties held that when civil remedy is available criminal case is barred. With these findings revision was dismissed by impugned order dated 29-7-2002.

7. Heard Sri S. R. Singh learned counsel for the applicant, the learned A.G.A. and perused the record.

8. The learned counsel for the applicant contended that the Courts below have rejected the application of the applicant solely on the ground that case is of civil nature therefore criminal prosecution cannot be launched. That the above proposition is wrong in view of Apex Court decision in Lalmuni Devi (Smt) v. State of Bihar (2001)2 SCC 17 : (2001 AIR SCW 2504). He further contended that the allegations of the application disclose a prima facie cognizable offence.

9. The Apex Court held in the case of Lalmuni v. State of Bihar (2001 AIR SCW 2504) (supra) in para 8 of the report as below :--

'There could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts no offence is made out. If that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed.'

10. In Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370 : (AIR 1985 SC 628), the question arose before the Apex Court that when the civil as well as criminal remedy is available to a party, can a criminal prosecution be completely barred. The Court held in paragraph 21 at page 382 (of SCC) : (at P. 635 of AIR) as under :--

'There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly co-extensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a Civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import.....'

11. In the case of *Alpic Finance Ltd. v. P. Sadasivan*, 2001 (2) JIC 68 : (AIR 2001 SC 1226), the Apex Court held that when somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between them, the aggrieved person may have right to sue for damages or compensation and at the same time law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating.

12. Thus, it is clear that when civil remedy is available, criminal case is not barred and each case has to be decided on the basis of its peculiar facts and circumstances to find out whether on the facts of the case a criminal offence is made out or not.

13. In the instant case, the allegation of applicant was that the opposite parties No.2 to 4 committed forgery and cheating by preparing a forged will allegedly executed by Jangilal in respect of entire area of plot in question. The allegations regarding forgery and cheating were that father's name of Jangilal was Lalji while it was mentioned as Murali in the will deed. Residence of Jangilal was also wrongly shown in the impugned will deed. The will deed contained thumb impression of Jangilal while he was literate and was putting his signature. Those allegations affect the validity of will deed to be taken as a ground for cancellation of will deed in a civil suit. There is no allegation regarding ingredients of offences punishable

under Sections 419, 420, 467 and 468 IPC. Even the date, time and place of the alleged offences was not given in the complaint. There was a vague allegation that all the opposite parties No. 2 to 4 committed the above offences. There is nothing in the complaint to show that the will deed was got executed by fraudulent inducement or by wilful misrepresentation. If Jangilal was literate, it cannot be said that the will deed was not bearing his thumb impression as there is nothing in the complaint to show that Jangilal had not put his thumb impression. Mentioning wrong parentage and residence also do not constitute offences punishable under above Sections.

14. In this way, having regard to the facts and circumstances of the case it is difficult to discern an element of deception in the alleged execution of will deed. Contrary to it, it is also clear from, the counter-affidavit of the opposite parties filed before Revisional Court that the applicant having executed sale deed in favour of opposite party No. 4 failed to deliver possession of the property in question and when suit for possession was filed by the opposite party No. 4, the applicant with oblique motive of causing harassment to the opposite parties Nos. 2 to 4 initiated criminal prosecution.

15. In view of above facts and circumstances of the case, I find that there was no sufficient ground for the Magistrate to order registration and investigation of the case and he rightly rejected the application under Section 156(3), Cr. P.C.

16. The application, therefore, has no force.

17. The application is, accordingly, rejected summarily.