

Surinder Singh Vs. State and anr

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Court : Delhi

Decided On : Jan-03-2012

Appellant : Surinder Singh

Respondent : State and anr

Advocate for Def. : Ms. Fizani Husain

Advocate for Pet/Ap. : Mr. Pradeep Dhingra

Judgement :

* THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 2137/2010
Reserved on: 19.12.2011 Pronounced on: 03.01.2012 SURINDER SINGH
Appellant Through : Mr. Pradeep Dhingra, Advocate. versus STATE and ANR.
Respondent Through : Ms. Fizani Husain, APP. Mr.Amit Sharma, Advocate for R2
and R3. CORAM: HON'BLE MR. JUSTICE M.L. MEHTA M.L. MEHTA, J..

1. This petition has been filed under Section 482 Cr PC seeking quashing of the order dated 01st July, 2010 of learned M.M. and all the proceedings arising therefrom..

2. Vide the impugned order, the learned M.M. allowed the application under Section 156(3) Cr PC of the complainants and directed the police to investigate and register case against the petitioner..

3. The facts in brief are that the petitioner and his mother Viran Bai (now deceased) got the property bearing No. D-236, Defence Colony, New Delhi mutated in their names on 14.1.1989 from the office of the L and DO by CrI.M.C. 2137/2010 *Page 1 of 12* submitting documents such as will of the owner/deceased Arjan Singh, who died on 17.11.1988, his death certificate and affidavits of legal representatives. The complainants Sarabjeet Singh and Dipender Singh were the LRs of the deceased Arjan Singh being his grand-children. Beside their affidavits, the affidavits of other LRs were also submitted to the L and DO. The main grievance of the complainants was that the affidavits submitted to the L and DO by the petitioner and his mother Viran Bai (now deceased) after the death of Arjan Singh were forged. Having come to know of the forgery committed by the petitioner and his mother, the complainant Sarabjeet Singh wrote to L and DO in the year 1993 for cancellation of the mutation orders in the names of the petitioner and his mother alleging them having filed their (complainants') forged affidavits. However, L and DO did not act upon the said representation of the complainants and wrote them to avail civil remedy in court of law. In the meanwhile, the mother of the petitioner Viran Bai died on 14.7.97 and the petitioner wrote to L and DO vide letter dated 30.12.2006 for mutation of the said property in his name as per the registered will dated 13th May, 1993 of his mother Viran Bai. The L and DO raised an objection to the said letter of the petitioner as it was not accompanied with fresh and new affidavits of other surviving legal heirs of Late Arjan Singh. In continuation of previous letter for mutation, the petitioner wrote another letter dated 29.5.2007 stating that the affidavits of the legal heirs/successors which were earlier filed still hold good as there is no change or any event having occurred thereafter. He also submitted an affidavit in support of this application along with death certificate of his mother Viran Bai again reiterating that all the legal heirs/successors have submitted their affidavits at the time of earlier substitution of his name along with his mother Viran Bai after the death of his father Arjan Singh. Thereafter, L and DO effected mutation of the property in the name of the petitioner stating it be on the basis of documents including CrI.M.C. 2137/2010 *Page 2 of 12* affidavits, death certificate and will furnished by the petitioner. This communication was received by the petitioner sometime in September, 2007..

4. Since the L and DO did not cancel the mutation in the name of the petitioner, the complainants made a complaint to the SHO, P.S. Tuglakh Road on 7.9.2009. Since no action was taken by the police, the complainants made the complaint to the Vigilance Department of the police on 8.12.2009. Thereafter, they chose to file the complaint before the Magistrate on 13.4.2010 on the same averments that the affidavits of all the LRs including the complainants submitted by the petitioner to L and DO were all forged. The learned M.M. vide the impugned order directed the police to investigate and register the case against the petitioner..

5. The police took up the investigation and in the process, has sent the disputed signatures of the complainants and other LRs to the FSL for analysis and comparison. The report of the FSL is still awaited..

6. I have heard the counsels for the parties and perused the record..

7. The petitioner has challenged the impugned order and all the proceedings following thereafter and the investigation being taken by the police including the comparison of the specimen signatures with the disputed signatures on the affidavits. The main contentions of the petitioner are that the mutation was initially effected in his name and his mother Viran Bai as per will dated 25.12.87 of his father Arjan Singh and subsequently, in his name alone as per the will of his mother Viran Bai dated 13.5.93. It was submitted that the affidavits were given by the LRs including the complainants and that, out of all the LRs, only the complainants have challenged the affidavits. It was also submitted that in any case, the cognizance was time barred inasmuch as the offence, if any, of forgery was CrI.M.C. 2137/2010 *Page 3 of 12* allegedly committed in the year 1988 when they had applied for mutation along with the affidavits. It was submitted that the offence allegedly committed by the petitioner as per the complainants own legal notice was under Section 471 IPC only and the punishment for such an offence being imprisonment for two years, the period of limitation to take cognizance under Section 468 Cr PC is only three years. In support of this contention, the learned counsel for the petitioner has placed reliance on the judgments of Supreme Court in Zandu Pharmaceutical Works Limited and Ors. Vs. Mohd. Sharaful Haque and Another, 2005 (1) SCC 122 and State of Punjab Vs. Sarwan Singh, 1981 (3) SCC.

34. In the case of Zandu Pharmaceutical Works Ltd. and Ors. (supra) relied upon by the petitioner, the facts were entirely different. In that case, the Magistrate had issued the process under Section 418 IPC. In any case, the Supreme Court having discussed its various earlier decisions on the subject held as under: "8. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the

process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto..

9. In *R. P. Kapur v. State of Punjab* (AIR 1960 SC 866) this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings: (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction; (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged; (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge..

10. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it *CrI.M.C. 2137/2010 Page 5 of 12* would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death"..

8. The facts in case *State of Punjab* (supra) are different from the present case. In that case, trial was barred by limitation and hence the accused was acquitted, whereas, in the present case, the trial has not even commenced. The Magistrate is

yet to take cognizance. Consequently, it is pointless to rely on this case..

9. It was also submitted that apart from the provisions of Section 468 Cr PC, the criminal proceedings initiated against the petitioner are hit by inordinate delay and reliance was placed on Kishan Singh (Dead) Through LRs Vs. Gurpal Singh and Others, (2010) 8 SCC 775 and S.P.Chengalvaraya Naidu (Dead) by LRs and Others Vs. Jagannath (Dead) by LRs and Others, II (1993) BC 546 (SC). With regard to the plea of inordinate delay and the case relied upon by the petitioner in Kishan Singh (supra), it is noted that this case was after the registration of the FIR. Thus, the same is also not applicable to the present case..

10. In S.P.Chengalvaraya Naidu (Dead) by LRs and Others (supra), it was recorded that preliminary decree was obtained by the respondent by playing fraud on the Trial Court and hence, it was set aside by this Court. This case would not be applicable in the present scenario because in the present case, only the order for investigation has been passed by the M.M. It is premature to arrive at a conclusion with regard to the outcome of the case and hence the investigation must be complete and there is no reason to interfere with it. Crl.M.C. 2137/2010
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11. On the other hand, the contention of the respondents are that the mutations, which were effected initially in the name of the petitioner and his mother Viran Bai were not on the basis of will alone, but also the affidavits of the LRs. It was contended that none of the LRs had signed any of those affidavits and that the petitioner has forged their signatures. It was next contended that the petition is apparently premature inasmuch as all that the learned M.M. had directed vide the impugned order was the investigation and registration of FIR and that case was under investigation with the FSL report being still awaited. It was submitted that since the Magistrate has not yet taken the cognizance, the petitioner has no right to stall the investigation..

12. With regard to the plea of the complaint being barred by time, it was contended by the respondents that it was not for the petitioner to decide as to what were the provisions which would be attracted and it would all depend upon the outcome of the investigation and the report that may be submitted by the police after

investigation and so, at this stage, it could not be said that only offence under Section 471 IPC was made out and thus, the complaint would be barred by limitation. It was submitted that in any case, they had come to know of the commission of the offence only in 1993 and they have been pursuing the matter since then with L and DO and with the police..

13. The background of the facts and also the allegations on which the complaint came to be filed before the Magistrate have been noted above. The main allegations against the petitioner was that he had forged the affidavits of the LRs including the complainants and that it was on the basis of not only the will of deceased Arjan Singh, but also their affidavits that the L and DO effected mutation initially in the name of the petitioner and his mother and thereafter, based on the same affidavits in the name of the petitioner after the death of his mother Viran Bai. The petitioner after death of his mother, Crl.M.C. 2137/2010 *Page 7 of 12* approached the L and DO for effecting the mutation of the property in his name based on the will of his mother. Vide his letter of 29th May, 2007, the petitioner reiterated that all the affidavits of the legal heirs/successors which were filed earlier still hold good as there is no change or any event occurred thereafter. He also submitted an affidavit dated 28th May, 2007 with this application. In the affidavit, he again reiterated that affidavits of all the legal heirs/successors were submitted at the time of the earlier substitution of the petitioner and that there is no change therein. Based on this, the mutation was effected by L and DO in his name on 13.9.2007. From this, it apparently stands established that it was not on the basis of the will alone, but in conjoint with the affidavits of the LRs of Late Arjan Singh including the complainants and death certificate that the mutation was effected..

14. Though the affidavits of the LRs were submitted with L and DO sometime in 1988-89, but from the allegations available on record, it is prima facie clear that the complainant could be said to have come to know of this sometime in May, 1993 when they all wrote to L and DO for cancellation of the mutation. From the record, it could not be seen that if any action was taken by the complainant from 1993 till 2009 when they made a complaint to the SHO. Since the SHO and the Vigilance Department did not take any action, the complainants approached the

Magistrate by filing a private complaint along with an application under Section 156(3) Cr PC. Vide the impugned order, the Magistrate is seen to have directed the police to investigate the matter and register the FIR. It has not been specifically mentioned by the Magistrate in the impugned order as to the provisions of law under which the offence were allegedly committed by the petitioner. What was recorded by the Magistrate was that having regard to the material available on record, prima facie commission of cognizable offence was made out and the police Crl.M.C. 2137/2010 *Page 8 of 12* was directed to investigate into the matter. In the process of investigation, the police has sent the disputed signatures for comparison to the FSL. There was no definite finding that it was only the offence under Section 468/471 IPC made out against the petitioner. In fact, it all appears to be premature to record any finding to interfere in the judicial discretion exercised by the Magistrate in directing the investigation under Section 156(3) Cr PC and to stall the same. The pleas which are sought to be taken by the petitioner are of defence and could not be gone into the present proceedings under Section 482 Cr PC at this stage..

15. The power of this court under Section 482 Cr PC can be noted in the words of Supreme Court in the case of State of A.P. Vs. Gourishetty Mahesh and Others, 2010 Cri LJ 3844, which held thus: "(12) While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, other wise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry. Though High Court may exercise its power relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence

or make out a case against the accused or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with CrI.M.C. 2137/2010 *Page 9 of 12* an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in. Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. We make it clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482"..

16. In the present case, there is a specific allegation against the petitioner that affidavits of both the complainants were forged and they were filed in the office of L and DO for getting substitution of property in his name as also of his mother's name. Complainants have also filed the copies of their alleged forged affidavits in the court and thus, the allegations could not be brushed aside outrightly..

17. In *Srinivas Gundluri and Ors. Vs. M/s. Sepco Electric Power* reported in 2010(3) Chandigarh Criminal Cases (SC) 247 the Hon'ble Supreme Court has held in para 13 that while directing the police to investigate under Section 156(3) of Cr.P.C., the Magistrate has not committed any illegality and in para 14 of the judgment it has been held that "14. Neither the charge-sheet nor the final report has been defined in the Code. The charge-sheet or final report whatever may be the nomenclature, it only means a report under Section 173 of the Code which has to be filed by the police officer on completion of his investigation. In view of our discussion, in the case on hand, we are satisfied that the Magistrate in passing the impugned order has not committed any illegality leading to manifest injustice warranting interference by the High Court in exercise of extraordinary jurisdiction conferred under Article 226 of the Constitution of India. We are also satisfied that learned single judge as well as the Division Bench rightly refused to interfere with

the limited order passed by the Magistrate. We also hold that challenge at this stage by the appellants is *Crl.M.C. 2137/2010 Page 10 of 12* pre-mature and the High Court rightly rejected their request."

18. The plea of the petitioner with regard to the period of limitation for the court to take cognizance of an offence will not apply in this case as the present case is at the initial stage of investigation and the report of FSL is still awaited. On consideration of the allegations, it prima facie appears that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious..

19. The question regarding the quashing of complaint was also considered by Supreme Court in *M/s. Medchl Chemicals and Pharma (P) Ltd. Vs. Biological E.Ltd. and Others*, (2000) 3 SCC 269, wherein the Supreme Court, after discussing its previous judgments on the subject, held as under: "Needless to record however and it being a settled principle of law that to exercise powers under Section 482 of the Code, the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear ex facie on the complaint. The observation in *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi* [1976 (3) SCC 736] lend support to the above statement of law. (1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused; (2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused; (3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and *Crl.M.C. 2137/2010 Page 11 of 12* (4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent

authority and the like. The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings"..

20. In view of my above discussion, I do not find any illegality or impropriety in the impugned order of the learned M.M. directing the police to investigate the matter and register the FIR. Petition is accordingly dismissed. M.L. MEHTA, J. JANUARY 03, 2012 akb Crl.M.C. 2137/2010 Page 12 of 12

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