SUPREME COURT OF INDIA

Syed Askari Hadi Ali Augustine Imam

Vs.

State (Delhi Admn.)

Crl.A.No. 416 of 2009

(S.B. Sinha, Lokeshwar Singh Panta and B. Sudershan Reddy J.J)

03.03.2009

JUDGMENT

S.B. SINHA, J.

1. Leave granted.

2. Effect of pendency of a probate proceeding vis-`-vis a criminal case involving allegations of forgery of a Will is the question involved in this appeal. It arises out of a judgment and order dated 23.7.2005 passed by a learned single judge of the Delhi High Court in Criminal Revision No. 184 of 2005.

3. Before embarking on the said legal question, we may notice the factual matrix involved herein. One Shamim Amna Imam (testatrix) indisputably was the owner of the properties in question. Allegedly, she executed a Will in favour of the appellants on 3.5.1998. She expired on 23.5.1998.

Her legal heir was one Smt. Syeda Mehndi Imam (`Syeda' for short), the mother of the testatrix. On or about 23.1.1999, Syed Askari Hadi Ali Augustine Imam (`Askari' for short) filed an application before the office of the Sub- Registrar Hazaribagh in the State of Jharkhand for registration of the said Will dated 3.5.1998. He also applied before the Delhi Development Authority (DDA) for grant of mutation in respect of the property situated at A-4, Chirag Co-operative Housing Society Limited known as Chirag Enclave, New Delhi on or about 25.2.1999 in view of the Will dated 3.5.1998. Indisputably, Syeda also made an application to the DDA on 23.4.1999 for grant of mutation in her favour. On or about 17.7.2000, the said Authority informed `Askari' that his request for mutation could not be acceded to as (1) the appellant could not produce the original copy of the Will dated 3.5.1998; (2) the property in question was under the possession of Shri M.C. Reddy and Shri M.H. Reddy, and (3) Title Suit (T.S. No. 262 of 1991) filed by testatrix against the appellant was pending in the civil court in Hazaribagh. Thereafter, appellant approached Permanent Lok Adalat (PLA) of the DDA, which by an award dated 20.2.2001 directed DDA to grant mutation in his favour. Syeda filed a writ petition marked as Writ Petition (C) No. 2263 of 2002 before the Delhi High Court for quashing of the said order dated 20.2.2001 of the PLA in pursuance whereof further proceedings before the PLA was directed to be stayed by an order 3.5.2002. Aggrieved thereby, Askari filed Writ Petition (C) No. 3579 of 2002, which has been dismissed by a learned single judge of the same High Court by an order dated 8.4.2003. Writ Petition (C) No. 2263 of 2002 filed by Syeda has been allowed by an order dated 29.9.2003, holding:

"I am thus of the considered view that the impugned direction dated 20.2.2001 could not have been passed by the Permanent Lok Adalat and the same is hereby quashed. Further, no purpose would be served in continuation of the proceedings before a Permanent Lok Adalat in view of the disputes not being capable of reconciliation till such time as the right of Respondent No.2 to the property in question in pursuance to the bequeath made under the will in dispute is finally adjudicated upon. It has already been held by this Court in Smt. Janak Vohra v. DDA 103 (2003) DLT 789 that in case of such disputed questions of title, and mutation being asked for, it is appropriate that the disputes of title be adjudicated in appropriate civil procedure and no direction be issued to mutate the property in the name of a party." An appeal preferred thereagainst before the Division Bench of High Court was dismissed. A Special Leave Petition filed thereagainst has also been dismissed by this Court. Indisputably Syeda filed a civil suit in the court of Subordinate Judge, Patna, which was marked as Civil Suit No. 71 of 2000, inter alia, questioning the genuineness of the said will based on which the appellants had claimed mutation in respect of the property at Delhi. Syeda also filed a criminal complaint on or about 19.9.2002 against the appellants under Sections 420/468/444/34 IPC in Greater Kailash-I, New Delhi, Police Station alleging that the Will dated 3.5.1998 had been forged by the appellants. The matter was investigated into and the disputed Will was sent for examination by the experts to the Forensic Science Laboratory and the same was found to be forged, stating: "All the documents were carefully and thoroughly examined with scientific instruments such as Stereo Microscope, Video Spectral Comparator- IV, Docucenter, VSC-2000/HR and Poliview System etc. under different lighting conditions and I am of the opinion that: The persons who wrote red enclosed signatures stamped and marked A1 to A4 did not write the red enclosed signatures similarly stamped and marked Q1 and Q2, for the following reasons: All the admitted signatures marked A1 to A4 are freely written, show natural variations and normal consistency among themselves which are observed in the genuine signatures of an individual executed over a period of time under varying circumstances. The questioned signatures marked Q1 & Q2 on the other hand are slow and drawn in their execution exhibit pen-lift at unusual places, stubbed finish and both the signatures marked Q1 and Q2 are superimposed over each other. In addition to these divergences are

also observed between the questioned and standard signatures in the detailed execution of various characters such as - nature of commencement and movement between two body parts of `S', isolated nature and location of `h', movement in the lower body part of `h', movement in the shoulders of `m' and manner of combining `m' with `i' and `i' with the terminal character `m', nature and direction of the finish of terminal part of `m' in the word `Shamim' as observed in Q1 & Q2 is nowhere observed in standards, leftward location of `I-dot' as observed in Q1 & Q2 is also found different in standards; manner of execution of `A', nature of the apex of `A', nature of commencement, shape and direction of the commencing part of `m' as observed in Q1, Q2 is also nowhere observed in standards; manner of combining `m' with `n' and omission of character `e' as observed in Q1, Q2 is also nowhere observed in standards, nature and shape of the shoulder of `n', movement in their shoulders; nature and shape of the oval of `a', nature and direction in the terminal part of `a' as observed in questioned signatures is also nowhere observed in standard signatures; habit of writing word `Imam' in questioned signatures is also nowhere observed in standards. The aforesaid divergences are fundamental in nature and beyond the range of natural variations and intended disguise and when considered collectively they lead me to the above said opinion." Cognizance of offences had been taken in the year 2002. Appellants were granted anticipatory bail by the learned Additional Sessions Judge, New Delhi by an order dated 16.11.2002. On or about 30.1.2003, appellants filed an application for grant of probate being Testamentary Case No. 1 of 2003 in respect of the Will dated 3.5.1998 before the Jharkhand High Court under Section 276 of the Indian Succession Act. We may, however, notice that in the aforementioned Testamentary Suit, Syeda was not originally impleaded as a party. The court, however, suo motu directed issuance of notice. She was impleaded as a party only on 20.9.2001. Indisputably, Syeda on or about 9.9.1999 executed a Will bequeathing her right, title and interest in the property in favour of Mr. Faiz Murtaza Ali ("Faiz" for short). She died on 22.2.2004. After her death Faiz claimed himself to be her legal heir on the strength of the said registered will dated 9.9.1999. Indisputably, appellants preferred Writ Petition (Criminal) No. 636 of 2004 before the Delhi High Court for quashing of the FIR dated 19.9.2002, which by reason of an order dated 29.7.2004 has been disposed of, stating:

"The petitioners, however, will be at liberty to move the trial court by way of moving an application for stay of the criminal trial pending adjudication of the question of genuineness of the Will by the Civil Court...."

Relying on or on the basis thereof, the appellants filed an application under Section 309 of the Code of Criminal Procedure, 1973 before the learned Metropolitan Magistrate seeking stay of proceedings of the criminal case, which has been dismissed by an order dated 10.2.2005, stating: "The perusal of the case shows that the accused have been charge sheeted for the offences under Section 420/468/448/34 IPC and during the investigation the documents including the alleged Will was seized by the IO and the same was sent to CFSL for expert opinion and it has been opined that the alleged Will was a forged one and on the basis of the said opinion the Hon'ble High Court had already opined in the order dated 29.7.2004 that there were no good grounds for quashment of the FIR and the proceedings arising out of the same, and the petition for quashing of the FIR was dismissed and the petitioners were given liberty by the Hon'ble High Court to move the trial court by way of a proper applications for stay of criminal trial pending adjudication of the question of the genuineness of the Will by the Civil Court. In the said order, only liberty has been granted to the applicants and the trial court has been directed only to dispose of the present application in

accordance with law." Aggrieved thereby and dissatisfied therewith, appellants preferred Criminal Revision No. 184 of 2005 before the Delhi High Court, which has been dismissed by reason of the impugned judgment.

4. Indisputably, Faiz, the nephew of the testratrix filed Caveat Petition No. 61 of 2005 in Testamentary Case No.1 of 2003 before the Jharkhand High Court, which was dismissed by a learned single judge by an order dated 4.1.2008 whereagainst L.P.A. No. 32 of 2008 was preferred but was dismissed by a Division Bench of the same Court by an order dated 2.4.2008, inter alia, holding:

"....Admittedly, the appellant - caveator is neither the brother of the testatrix, nor the descendant of the brother or the sister of the testatrix. The mere fact that the testatrix predeceased her mother would not entitle the descendant of the brother of the said mother of the testatrix to have caveatable interest to implead himself as one of the parties in the probate proceedings. It is contended that several litigations are going on between the parties with regard to the properties inclusive of the properties which are the subject-matter of the Will sought to be probated in the testimony case and in those cases, the petitioner - caveator has been allowed to be impleaded. Merely because the petitioner - appellant has been impleaded or substituted in other pending suits with reference to the disputes over the properties including the properties which are the subject matter of the Will, he cannot claim the right to have caveatable interest..."

However, before us, an application for impleadment has been filed, which has been allowed by an order dated 27.8.2007.

5. Indisputably, the property at A-4, Chirag Co-operative Housing Society Limited known as Chirag Enclave, New Delhi was mutated in the name of said Faiz by an order dated 12.4.2006. Askari and Sayed Akabir Hussain filed writ petitions thereagainst. The said writ petitions also were dismissed. It is, however, stated at the Bar that the review application has been allowed.

6. We have noticed hereinbefore that the appellant filed an application for quashing of the FIR which was, however, dismissed by an order dated 29.7.2004 observing that the appellants would be at liberty to move the trial court by way of moving an application for stay of the criminal trial pending adjudication of the question of the genuineness of the Will by the Civil Court.

7. Mr. Dinesh Dwivedi, learned Senior Counsel appearing on behalf of the appellants, would urge: (i) A judgment in a probate proceeding being a judgment in rem as envisaged under Section 41 of the Indian Evidence Act, the criminal proceedings should have been directed to be stayed. (ii) The learned trial judge as also the High Court committed a serious error insofar as they failed to take

into consideration that the application under Section 309 of the Code of Criminal Procedure was dismissed on the same ground on which the application for quashing the proceedings had been dismissed.

8. Mr. A. Sharan, learned Additional Solicitor General appearing for State and Dr. A.M. Singhvi, learned Senior Counsel appearing on behalf of the impleaded respondent, however would support the impugned judgment.

9. Indisputably, in a given case, a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case. The question as to whether in the facts and circumstances of the case one or the other proceedings would be stayed would depend upon several factors including the nature and the stage of the case.

10. It is, however, now well settled that ordinarily a criminal proceeding will have primacy over the civil proceeding. Precedence to a criminal proceeding is given having regard to the fact that disposal of a civil proceeding ordinarily takes a long time and in the interest of justice the former should be disposed of as expeditiously as possible. The law in this behalf has been laid down in a large number of decisions. We may notice a few of them. In M.S. Sheriff & anr. vs. State of Madras & Ors. [AIR 1954 SC 397], a Constitution Bench of this Court was seized of a question as to whether a civil suit or a criminal case should be stayed in the event both are pending; it was opined that the criminal matter should be given precedence. In regard to the possibility of conflict in decisions, it was held that the law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other or even relevant, except for certain limited purposes, such as sentence or damages. It was held that the only relevant consideration was the likelihood of embarrassment. If primacy is to be given to a criminal proceeding, indisputably, the civil suit must be determined on its own merit, keeping in view the evidences brought before it and not in terms of the evidence brought in the criminal proceeding. The question came up for consideration in K.G. Premshanker vs. Inspector of Police and anr. [(2002) 8 SCC 87], wherein this Court inter alia held: "30. What emerges from the aforesaid discussion is -- (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of res judicata may apply; (3) in a criminal case, Section 300 CrPC makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein. 31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by A on B's property, B filed a suit for declaration of its title and to recover possession from A and suit is decreed. Thereafter, in a criminal prosecution by B against A for trespass, judgment passed between the parties in civil

proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of B over the property. In such case, A may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is -- whether judgment, order or decree is relevant, if relevant -- its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case." It is, however, significant to notice that the decision of this Court in M/s Karam Chand Ganga Prasad & anr. etc. vs. Union of India & ors. [(1970) 3 SCC 694], wherein it was categorically held that the decisions of the civil courts will be binding on the criminal courts but the converse is not true, was overruled, stating: "33. Hence, the observation made by this Court in V.M. Shah case that the finding recorded by the criminal court stands superseded by the finding recorded by the civil court is not correct enunciation of law. Further, the general observations made in Karam Chand case are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in M.S. Sheriff case as well as Sections 40 to 43 of the Evidence Act."

11. Axiomatically, if judgment of a civil court is not binding on a criminal court, a judgment of a criminal court will certainly not be binding on a civil court. We have noticed hereinbefore that Section 43 of the Evidence Act categorically states that judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provisions of the Act. No other provision of the Evidence Act or for that matter any other statute has been brought to our notice. Another Constitution Bench of this Court had the occasion to consider a similar question in Iqbal Singh Marwah & Anr. vs. Meenakshi Marwah & Anr. [(2005) 4 SCC 370] wherein it was held:

24. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340 CrPC contemplates holding of a preliminary enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343(2) confers a discretion upon a court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are challenged in successive appellate fora which are time-consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343(2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us from accepting the broad interpretation sought to be placed upon clause (b)(ii)." Relying inter alia on M.S. Sheriff (supra), it was furthermore held:

"32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein." The question yet again came up for consideration in P. Swaroopa Rani vs. M. Hari Narayana @ Hari Babu [AIR 2008 SC 1884], wherein it was categorically held: "13. It is, however, well-settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case."

12. Mr. Dwivedi, however, would urge that in a case of this nature Section 41 of the Indian Evidence Act, 1872 would be applicable. Mr. Dwivedi would in support of his aforementioned contention place strong reliance on Sardool Singh & Anr. vs. Smt. Nasib Kaur [1987 (Supp.) SCC 146], Commissioner of Income Tax, Mumbai vs. Bhupen Champak Lal Dalal & anr. [(2001) 3 SCC 459] and Surinder Kumar & ors. vs. Gian Chand & ors. [AIR 1957 SC 875]. Section 41 of the Indian Evidence Act reads as under: "41 - Relevancy of certain judgments in probate, etc., jurisdiction. -- A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial admiralty or insolvency jurisdiction which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant. Such judgment, order or decree is conclusive proof- that any legal character which it confers accrued at the time when such judgment, order or decree came into operation; that any legal character, to which it declares any such person to be entitled, accrued, to that person at the time when such judgment, order or decree declares it to have accrued to that person; that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease; and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property." It speaks about a judgment. Section 41 of the Evidence Act would become applicable only when a final judgment is rendered. Rendition of a final judgment which would be binding on the whole world being conclusive in nature shall take a long time. As and when a judgment is rendered in one proceeding subject to the admissibility thereof keeping in view Section 43 of the Evidence Act may be produced in another proceeding. It is, however, beyond any cavil that a judgment rendered by a probate court is a judgment in rem. It is binding on all courts and authorities. Being a judgment in rem it will have effect over other judgments. A judgment in rem indisputably is conclusive in a criminal as well as in a civil proceeding.

We may, however, notice that whether a judgment in rem is conclusive in a criminal proceeding or not, is a matter of some doubt under the English law. Johnson and Bridgman, Taylor of Evidence, Vol. 2, in S.1680 notes that `whether a judgment in rem is conclusive in a criminal proceeding is a question which admits of some doubt'. It is, however, concluded that it is said that nothing can be more inconvenient or dangerous than a conflict of decisions between different courts, and that, if

judgments in rem are not regarded as binding upon all courts alike, the most startling anomalies may occur. A three judge Bench of this Court had the occasion to consider the legal effect of a judgment vis-`-vis Section 41 of the Evidence Act in Surinder Kumar & ors. vs. Gian Chand & ors. [AIR 1957 SC 875]. Kapur, J. speaking for the Bench, opined: "It is clear that the probate was applied for and obtained after the judgment of the High Court and therefore could not have been produced in that Court. The judgment of the Probate Court must be presumed to have been obtained in accordance with the procedure prescribed by law and it is a judgment in rem. The objection that the respondents were not parties to it is thus unsustainable because of the nature of the judgment itself." The question came up for consideration again before this Court in Sardool Singh & Anr. vs. Smt. Nasib Kaur [1987 (Supp.) SCC 146], wherein it was opined: "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." No ratio, however, can be culled out therefrom. Why such a direction was issued or such observations were made do not appear from the said decision.

13. Herein, however, criminal case had already been instituted. Whether the same would be allowed to be continued or not is the question. We have noticed hereinbefore the decision in K.G. Premshanker (supra). Mr. Dwivedi, however, would submit that the court therein was concerned with a case involving Section 42 of the Evidence Act. The learned counsel may be correct as it was held that Section 41 is an exception to Sections 40, 42 and 43 of the Act providing as to which judgment would be conclusive proof of what is stated therein. To the same effect are the decisions of some of the High Courts. In Mt. Daropti vs. Mt. Santi [1929 Lahore 483], it was held: "The learned District Judge has held that the will was either a forgery or had been executed under "undue influence". As regards "undue influence" here was neither any plea, nor evidence on the record to support the learned Judge's finding. Moreover, these questions could not be raised in the present suit until and unless the letters of administration granted to Mela Ram was revoked. It was held in Komollochun Dutt v.Nilrutten Mandal (1897) 4 Cal. 360, in somewhat similar circumstances under the Succession Act of 1865, that where it is alleged that a probate has been wrongly granted, the proper course is to apply to the Court which granted the probate to revoke the same. The grant of letters of administration in the present case stands on the same footing. The grant of letters of administration so long as it subsists is conclusive evidence as regards the proper execution of the Will and the legal character conferred on the administrator : vide Ss. 12 and 59, Probate and Administration Act, 1881, corresponding to Ss.227 and 273, Succession Act, 1925, which now incorporates that Act, S.41, Evidence Act etc: Babu Lal v. Hari Bakhsh (1918) 13 P.R. 1918; Venkataratnam v. Ram Mohana Rao (1916) 31 M.L.J. 277; Kishore Bhai Rewa Das v. Ranchodia (1916) 38 Bom. 427..."

In Darbara Singh vs. Karminder Singh & ors. [AIR 1979 Punjab & Haryana 215], it was held:

"5. The provision of sub-section (1) of Section 8 of the Act makes it expressly clear in unqualified terms that no personal covenant of the guardian shall be binding on the minor. It means only this that, when looked from the stand point that the aforesaid interdiction is added at the fag-end of Section 8(1) by way of proviso to the clause that preceded it, a guardian though well within his right to enter into a contract for the benefit of the minor, but the said contract would not be enforceable against the minor even when it was entered for his benefit and would be voidable at his instance."

A Constitution Bench of this Court in Iqbal Singh Marwah & anr. (supra) also does not appear to have dealt with this aspect of the matter. The question, however, would be as to whether despite the same should we interfere with the impugned judgment. We do not think that we should. Firstly, because the criminal case was instituted much prior to the initiation of the probate proceeding and secondly because of the conduct of the appellant and the stage in which the probate proceedings are pending. For the aforementioned purpose, it may not be relevant for us to enter into the disputed question as to whether the Will is surrounded by suspicious circumstances as the same would appropriately call for decision in the testamentary proceeding. Pendency of two proceedings whether civil or criminal, however, by itself would not attract the provisions of Section 41 of the Evidence Act. A judgment has to be pronounced. The genuineness of the Will must be gone into. Law envisages not only genuineness of the Will but also explanation to all the suspicious circumstances surrounding thereto besides proof thereof in terms of Section 63(c) of the Indian Succession Act, and Section 68 of the Evidence Act. [See Lalitaben Jayantilal Popat vs. Pragnaben Jamnadas Kataria & ors. 2009 (1) SCALE 328]

14. The FIR was lodged not only in regard to forgery by the Will but also on the cause of action of a trespass. Appellant admittedly is facing trial under Section 420, 468 and 448 of the IPC. It is, thus, possible that even if the Will is found to be genuine and that no case under Section 468 of the IPC is found to have been made out, appellant may be convicted for commission of other offences for which he has been charged against, namely, trespass into the property and cheating. If it is found that the appellant is guilty of trespass, he may be asked to handover possession of the premises in question to the complainant.

15. Exercise of such a jurisdiction furthermore is discretionary. As noticed by several decisions of this Court, including two Constitution Bench decisions, primacy has to be given to a criminal case. The FIR was lodged on 19.9.2002. Not only another civil suit is pending, as noticed hereinbefore, but a lis in relation to mutation is also pending. Whereas the criminal case is pending before the Delhi court, the testamentary suit has been filed before the Jharkhand High Court. Since 2003 not much progress has been made therein. The Will has not been sent to the handwriting expert for his opinion, which is essential for determination of the question in regard to the genuineness of the Will. It is alleged that the Will was registered at Hazaribagh after the death of the testatrix. For the

last seven years in view of the pendency of the matters before the High Courts in different proceedings initiated by the appellant, the criminal case has not proceeded, although as noticed hereinbefore charge-sheet has been filed and cognizance of the offence has been taken. We, therefore, are of the opinion that it is not a fit case where we should exercise our discretionary jurisdiction under Article 136 of the Constitution of India having regard to the facts and circumstances of the present case.

16. For the aforementioned reasons, we find no merit in this appeal. The appeal is dismissed. No costs.