

SUPREME COURT OF INDIA

M.Srikanth

Vs.

State of Telangana

CrI.A.No.1586 of 2019

(Navin Sinha and B.R.Gavai,J.,)

21.10.2019

JUDGMENT

B.R.Gavai,J.,

SLP(CrI.)No.9156 of 2017

1. Leave granted in both the Special Leave Petitions.
2. Both these appeals arise out of the common Judgment and Order passed by the single Judge of High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh dated 01.06.2017.
3. The criminal appeal arising out of S.L.P. (CrI.) No. 9156 of 2017 filed by M. Srikanth, the original accused No. 4, challenges that part of the order by which the single Judge of the High Court has rejected his application under Section 482 of the Cr.P.C. for quashing the proceedings in Crime No. 311/2010 of P.S., Central Crime Station, Hyderabad. The criminal appeals arising out of S.L.P. (CrI.) Nos. 9160-9161 of 2017 at the instance of the original complainant challenge that part of the order vide which the single Judge of the High Court has quashed the complaint qua accused Nos. 5, 6, 7, 8 and 9.
4. The facts, in brief, giving rise to the present appeals are as under:

The parties are referred to herein as they are arrayed in the original complaint. The Respondent No. 2, Fatima Hasna, in the criminal appeal arising out of S.L.P. (CrI.) No. 9156 of 2017 (hereinafter referred to as “the complainant”), is the sister of accused No. 1, Akramuddin Hasan. The complainant had filed a private complaint against nine persons including accused No. 1. The allegations in the said complaint in a nutshell is that the house bearing No. 3-5-1102 at Narayanaguda, Hyderabad, originally belonged to Afzaluddin Hassan, the father of the complainant, who died on 28.05.1996. Afzaluddin Hassan, possessed the same upon death of his mother, Khairunnisa Begum Saheba as per the oral gift dated 12.12.1966 and deed of

confirmation of the said oral gift. It was the case of the complainant, that upon death of her father, Afzaluddin Hassan, the said property was inherited by her as well as her three sisters and accused No. 1, her brother. It is further averred in the complaint, that her father had entered into a development agreement on 25.05.1989 with M/s Banjara Construction Company Pvt. Ltd. However, the same was cancelled during his lifetime. It is further averred by her that after the death of her father, accused No. 3, Abid Rassol Khan, tried to trespass into the property and for that on her complaint, Crime No. 159/1996 came to be registered for the offence punishable under Sections 448 and 380 of the IPC on 14.06.1996.

5. It is further averred by her that, thereafter, she came to know about the existence of a document thereby assigning the rights by M/s Banjara Construction Company Pvt. Ltd. in favour of M/s NRI Housing Company Pvt. Ltd., represented through accused No. 3, Abid Rasool Khan. For the said incident another complaint vide Crime No. 177/1996, came to be registered for the offence punishable under Sections 418 and 420 read with Section 120-B of the IPC against seven persons including M/s Banjara Construction Company Pvt. Ltd. and accused No. 3 in the present case. With regard to the said cause of action, the complainant had also filed Original Suit No. 1989/1996 against accused No. 3 and others for permanent injunction. The complainant's sisters had filed O.S. No. 1403/1999 against M/s Banjara Construction Company Pvt. Ltd. of which accused No. 3, Abid Rasool Khan, was the Managing Director. According to the complainant, certain interim orders were also passed in the said original suits.

6. It is further the case of the complainant in the complaint, that her brother accused No. 1, Akramuddin Hasan, who had falsely created a will in Urdu purported to be executed by their paternal grandmother, Khairunnisa Begum Saheba, in favour of their parents Afzaluddin Hassan and Liaquathunnisa Begum for their lifetime and vested remainder to accused No. 1. It is the case of the complainant, that the said will is registered and said to have been executed on 02.04.1950. Further, it is the case, that accused No. 1 had also created another forged and fabricated document styled as deed of confirmation (Hiba Bil Musha) dated 08.03.1990 vide which the property is orally gifted to accused No. 1 on 29.08.1989 and also handed over physical possession thereof.

7. It is further the case of the complainant, that accused No. 1, posing himself to be the owner of the premises, on the basis of the alleged oral will and deed of confirmation, created a registered lease on 01.12.2008, bearing document No. 3107/2008 permitting accused No. 4 to sub-lease the said land in favour of accused No. 5, Hindustan Petroleum Corporation Ltd. ("HPCL"). Accused No. 6 and accused No. 9 are the employees/officers of accused No. 5 - HPCL whereas, accused Nos. 7 and 8 are the attesting witnesses. On the basis of the said complaint, the Chief Metropolitan Magistrate directed the registration of an FIR on 24.11.2010.

8. It appears, that various criminal petitions came to be filed before the High Court. Criminal Petition No. 6047/2013 was filed by accused No. 7, Khaja Mohiuddin and accused No. 8, G. V. Prasad. Criminal Petition No. 6064/2013 came to be filed by accused

No. 3, Abid Rasool Khan. Criminal Petition No. 6609/2013 came to be filed by accused No. 4, M. Srikanth, who is the appellant in the criminal appeal arising out of SLP (Crl.) No. 9156/2017. Criminal Petition No. 8743/2013 was filed by accused No. 5 - HPCL and its officers, accused No. 6, S.K. Srui and accused No. 9, R. Umaphathi. By the impugned Order, the High Court allowed the Criminal Petitions of all the applicants except accused Nos. 3 and 4.

9. Being aggrieved by the dismissal of his petition, accused No. 4, so also the original complainant, being aggrieved by the impugned Order by which the petitions of accused Nos. 5, 6, 7, 8 and 9 have been allowed, have approached this Court.

10. We have heard Mr. D. Rama Krishna Reddy, learned counsel appearing on behalf of the appellant, M. Srikanth, and Mr. Shakil Ahmed Syed, learned counsel appearing on behalf of the complainant. We have also heard Mr. K. M. Nataraj, learned Additional Solicitor General, appearing on behalf of the original accused No. 5 - HPCL and its officers/employees, accused Nos. 6 and 9.

11. The learned counsel for the original accused No. 4 submitted, that the only role attributed to the said accused in the complaint is that a lease deed was executed in his favour by accused No. 1, showing himself to be the absolute owner of the property in question; whereas, the property was owned by the complainant and her three sisters along with accused No. 1. It is further submitted, that the entire allegations of fabrication so as to show that the property belongs to accused No. 1 are against accused no. 1. It is submitted that accused No. 4, on the basis of the advertisement issued by accused No. 5 - HPCL for installation of a petrol pump, had applied and after being successful in the competition had obtained the land in question on lease from accused No. 1. He submitted, that as per the terms and conditions for grant of the said outlet, he was required to get the land on long term lease and sub-lease the same to accused No. 5 - HPCL. It is submitted, that even taking the complaint at its face value, there are no averments which would show that accused No. 4 had any role to play in fabrication of the document which bestowed the title on accused No. 1. It is further submitted, that there are various civil proceedings pending amongst the complainant, accused No. 1 and their sisters so also the other parties. Accused No. 4 is not at all concerned with the same.

12. It is further submitted, that as a matter of fact, the case of accused No. 4 could not have been distinguished from the case as against accused Nos. 5, 6, 7, 8 and 9. It is submitted, that applying the same logic, which the learned Judge of the High Court had applied while quashing the case against the said accused, the case against the present accused No. 4 also ought to have been quashed. It is submitted that the continuation of criminal proceedings against accused No. 4, the appellant herein, would be nothing else but an abuse of the process of law.

13. Per contra, Mr. Shakil Ahmed Syed, learned counsel appearing on behalf of the private complainant, submitted that the High Court has rightly dismissed the petition of accused No. 4. It is submitted, that accused No. 4 in order to deprive the benefits of the property to

the complainant had got the lease deed executed in his favour from accused No. 1 knowing very well that the claim of accused No. 1 was based on fabricated document(s). He further submitted, that the High Court had also erred in allowing the petitions of accused Nos. 5, 6, 7, 8 and 9 and, therefore, the order to the extent that it quashes the criminal proceedings qua them also needs to be set aside.

14. Mr. K.M. Nataraj, learned Additional Solicitor General, submitted that accused Nos. 5, 6 and 9 have been unnecessarily dragged in the said criminal litigation. It is submitted that accused No. 5 - HPCL is a public undertaking and accused Nos. 6 and 9 are its officers. It is submitted that the High Court has rightly arrived at a finding that there was no material against them and quashed the criminal proceedings qua them.

15. This Court, in the case of *State of Haryana and Ors. vs. Bhajan Lal and Ors*¹. after considering all its earlier judgments, has laid down principles which are required to be taken into consideration by the High Court while exercising its jurisdiction under Section 482 of the Cr.P.C. for quashing the proceedings. It will be relevant to refer to the following observations of this Court in *Bhajan Lal* (supra):

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police

officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

16. It could thus be seen, that this Court has held, that where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute a case against the accused, the High Court would be justified in quashing the proceedings. Further, it has been held that where the uncontroverted allegations in the FIR and the evidence collected in support of the same do not disclose any offence and make out a case against the accused, the court would be justified in quashing the proceedings.

17. Let us consider the case of the complainant on its face value without going into the truthfulness or otherwise thereof. It is the case of the complainant, that the property originally belonged to her grandmother. After her death, it devolved upon her father, Afzaluddin Hassan and after his death on 28.05.1996, it devolved upon accused No. 1 and his three sisters, namely, Karima Siddiqua, Saleha Asmatunnisa and Sadika Khairunnisa. Their father had entered into a development agreement with M/s Banjara Construction Company Pvt. Ltd., however, the same was cancelled during his lifetime. After the death of their father on 28.05.1996, accused No. 3 tried to trespass into the property for which, on the basis of her complaint a crime was registered. That the said M/s Banjara Construction Company Pvt. Ltd. had executed some document alleging assignment of its rights in favour of M/s NRI Housing Company Pvt. Ltd. of which accused No. 3, Abid Rasool Khan was the Managing Director. In respect of the same action, Crime No. 177/1996 had been registered at the instance of the complainant. With respect to the said transaction, two original suits were already filed, one by the complainant and another by her sisters.

18. It is further the case of the complainant, that accused No.1 created a will in Urdu purported to be executed by her grandmother bequeathing the property in favour of her parents, namely, Afzaluddin Hassan and Liaquathunnisa Begum for their lifetime and

vesting the remainder to accused No. 1. The said will is created on a non-judicial stamp paper of Nizam Jung and has been allegedly executed on 02.04.1950. According to the complainant, accused No. 1, her brother, had created another forged and fabricated document styled as deed of confirmation (Hiba Bil Musha) dated 08.03.1990 confirming the oral gift to accused No. 1 and also recording handing over of physical possession. It is her case, that on the basis of these fabricated documents, accused No. 1, posing himself to be an absolute owner of the property, executed a lease deed in favour of accused No. 4 (the appellant herein in one of the appeals) on 01.12.2008. It is further the case of the complainant, that thereafter accused No. 4 executed a sub-lease in favour of accused No. 5 - HPCL represented by accused Nos. 6 and 9 within a period of two months i.e. on 30.01.2009 and that accused Nos. 7 and 8 are the attesting witnesses. That is all the case of the complainant.

19. The complaint filed by respondent No. 2 runs into 26 pages and 26 paragraphs. As already discussed hereinabove, it reveals a disputed property claim based on inheritance between the complainant, her sisters and her brother, accused No. 1. A perusal of the complaint would further reveal, that the complainant also disputes with regard to the area of the property including the manner of its devolution upon the parents of the complainant and her competing interest with that of her siblings. There is not even a whisper in the complaint that the present appellant, i.e., accused No. 4 was fully aware that accused No. 1 was not the sole beneficiary by inheritance and that the property had devolved upon the complainant and her sisters. Also there is nothing to show that knowing this he has collusively entered into the lease agreement with accused No. 1, by creating a false and fabricated will. Though, there is a mention with regard to conspiracy, but there is not even a suggestion with regard to manner of such conspiracy.

20. Upon perusal of the complaint itself, it would reveal that the father of the complainant and accused No. 3 had himself entered into a development agreement which subsequently came to be cancelled during his lifetime. It would also reveal, that only after the lease in question was executed in favour of the appellant, the complainant has raised all these issues. We are of the considered view, that the issues raised reflect a civil dispute with regard to inheritance amongst the legal heirs. We fail to understand as to how a dispute with regard to the inheritance under a will and deed of confirmation can be decided in a criminal proceeding. We find, that the same can be done only in an appropriate civil proceeding. Not only that, the civil proceedings with that regard are already instituted by various parties including the complainant. These proceedings are as follows:

- (i) O.S. No. 239 of 2004 on the file of the Hon'ble XI ACJ, CCC, Hyderabad.
- (ii) O.S. No. 337 of 2002 on the file of the Hon'ble XI ACJ, CCC, Hyderabad.
- (iii) O.S. No. 58 of 2001 on the file of the Hon'ble XI ACJ, CCC, Hyderabad.
- (iv) O.S. No. 277 of 2000 on the file of the Hon'ble XI ACJ, CCC, Hyderabad.
- (v) O.S. No. 506 of 2001 on the file of the Hon'ble XI ACJ, CCC, Hyderabad.
- (vi) Writ Petition (C) No. 685 of 2010.

21. It will be relevant to refer that though in the complaint, the complainant had mentioned

about pendency of O.S. No. 1989 of 1996 against accused No. 3 and O.S. No. 1403 of 1999 against M/s Banjara Construction Pvt. Ltd., there is no reference with regard to the other proceedings. Accused No. 4 has been impleaded as a party-defendant in O.S. No. 506 of 2001 only on 30.10.2009.

22. O.S. No. 239 of 2004 has already been filed by the complainant against her brother, accused No. 1 and her three sisters inter alia for partition and separate possession which is stated to be pending. As such, the documents alleged to be fraudulent in the complaint will fall for consideration in the said suit. A possibility of contradictory finding in civil proceeding as against criminal proceedings cannot be ruled out. Though, the complainant had filed Writ Petition Nos. 23017/2009 and 23672/2009 to restrain construction on the plot in question, the same was dismissed on 28.10.2009. However, there is no mention with regard to the same in the complaint. This Court in *Sardool Singh vs. Nasib Kaur*² observed as follows:

“2. 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. We of course refrain from expressing any opinion as regards genuineness or otherwise of the Will in question as there is no occasion to do so and the question is wide open before the lower courts.”

23. It is further to be noted, that the complainant and her sisters executed an agreement of sale-cum-irrevocable specific power of attorney on 20.03.2015 in favour of one Mohd. Khalid Shareef. Various litigations have also been filed with regard to the installation of the petrol pump and grant of N.O.C. etc. The complaint was sent to the police for registration of an FIR and investigation under Section 156(3) of the Cr.P.C. on 24.11.2010. In its final report dated 30.08.2017, the police has opined that no material had surfaced to show any conspiracy during investigation.

24. The learned Judge himself in Paragraph 8, after observing that it is nobodies case that the signatures on the documents in question are forged or anybody has impersonated for the purpose of cheating, goes on to observe thus:

“8 The allegation in nutshell in this regard is that accused No. 1 is not the absolute owner of the properties, but for one of the co-owner or co-sharer along with the de facto complainant and other sisters of them and he falsely claimed as if he is the owner for purpose of cheating by using as if genuine forged and fabricated documents of so called will and so called deed of confirmation. The so called will is of the year 1950 and the so called deed of confirmation is of year 1989-1990 and the alleged oral gift prior to that is of 1966....”

25. We fail to understand, as to how after observing the aforesaid, the learned Judge could have refused to quash the proceedings against accused No. 4. Not only that, but on the basis of the said observations, the learned Judge himself has observed that it will not be in the interest of justice to permit the Police authorities to arrest the accused for the purposes of investigation. We are of the considered view, that the learned Judge, having found that the entire allegations with regard to forgery and fabrication and accused No. 1 executing the lease deed on the basis of the said forged and fabricated documents were only against accused No. 1, ought to have exercised his jurisdiction to quash the proceedings qua accused No. 4 also. We find that the learned Judge ought to have applied the same parameters to the present accused No. 4, which had been applied to the other accused whose applications were allowed.

26. Insofar as the criminal appeals arising out of the special leave petitions filed by the original complainant is concerned, we absolutely find no merit in the appeals. The learned single Judge has rightly found that there was no material to proceed against accused No. 5 - HPCL and its officers accused Nos. 6 and 9 as also accused Nos. 7 and 8, who have been roped in, only because they were the attesting witnesses. The learned single Judge has rightly exercised his jurisdiction under Section 482 of the Cr.P.C.

27. Insofar as original accused No. 4 is concerned, we have no hesitation to hold, that his case is covered by categories (1) and (3) carved out by this Court in the case of Bhajan Lal (supra). As already discussed hereinabove, even if the allegations in the complaint are taken on its face value, there is no material to proceed further against accused No. 4. We are of the considered view, that continuation of criminal proceedings against accused No. 4, M. Srikanth, would amount to nothing else but an abuse of process of law. As such, his appeal deserves to be allowed.

28. In the result, the criminal appeal arising out of S.L.P. (Crl.) No. 9156/2017 filed by accused No. 4 is allowed. The criminal proceedings in Crime No. 311/2010 of P.S., Central Crime Station, Hyderabad, against accused No. 4 are quashed and set aside. The criminal appeals arising out of S.L.P. (Crl.) Nos. 9160-61/2017 filed by the original complainant are dismissed.

Judgment Referred.

¹2008 INSC 1957

²1987 INSC 0089