

**HIGH COURT OF MADHYA PRADESH, BENCH GWALIOR****(BEFORE: HON'BLE SHRI JUSTICE S.S.DWIVEDI)****(Misc. Cri. Case No. 5538 of 2008)**

**Pansingh Narvaria  
Vs.  
State of Madhya Pradesh**

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Shri Rajesh Shukla, Advocate for the applicants.  
Shri Mukund Bharadwaj, Public Prosecutor, for the respondent-State.  
Ku.Diksha Mishra, Advocate for the complainant.  
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**ORDER**  
**(Passed on 8<sup>th</sup> the day of January, 2010)**

The applicant has filed this petition under Section 482 of the Code of Criminal Procedure, for quashment of the FIR registered against the applicant by Police Station Gormi, district Bhind as Crime No.114/08 for the offence under Sections 420, 467, 468 and 471 of IPC.

2. Briefly stated the facts of the case are, one Bhuri Bai/complainant has lodged a written complaint on 3.6.2008 to the SDO (P) Mehgaon with the allegation that the present applicant has forged a will alleged to be executed by the husband of the complainant, namely, Man Singh. It is also alleged in this complaint that Man Singh was suffering from cancer and he was not able to execute any document in the Registrar's Office. Man Singh had already executed a will on 28.6.2008 in favour of complainant Bhuri Bai. Thereafter, the forged will has been produced by the present applicant Pan Singh in the Revenue Court and got mutation on the land belonging to the deceased Man Singh, the husband of the complainant. On these allegations made in the written complaint the Police Gormi had registered the aforesaid crime no. 114/08 against the present applicant for the offence punishable under Sections 420, 467, 468 and 471 of IPC. When the applicant came to know about the registration of the case then the applicant has filed this petition under Section 482 Cr.P.C. for quashment of the said FIR.

3. Having heard the learned counsel for the applicant as well as learned Public Prosecutor for the State and the learned counsel appearing for the complainant Bhuri Bai.

4. It is submitted on behalf of the applicant that a will has been properly executed by the husband of the complainant namely Man Singh in favour of the applicant. On the basis of this will in the Revenue Court in Case No. 30/07-08A-6 the mutation proceedings have been got started by the applicant and the name of applicant has been mutated in the revenue record on the land belonging to the deceased Man Singh. Similarly, the complainant has also filed a civil suit before the competent Civil Court for possession of the land and declaration to the effect that the said will which was shown to be executed in favour of the applicant Pan Singh is forged one and by this forged will Pan Singh cannot claim any right title and interest on the property belonging to the deceased Man Singh. This case is still pending before the competent Civil Court wherein the said will is under consideration as to whether the will is forged one or not and before the finding of the competent Civil Court the complainant has lodged this false report against the applicant. Therefore, prayed for quashment of the criminal FIR registered against the applicant on the ground that the matter is subjudice before the competent Civil Court and the finding of Civil Court is binding on both the parties. Therefore, registration of the criminal case against the applicant is abuse of process of law, therefore, prayed for quashment of the criminal FIR registered against the applicant.

5. Learned Public Prosecutor for the State opposed the petition and prayed for its rejection.

6. Learned counsel for the complainant vehemently opposed the petition and submits that the pendency of a civil dispute in between the parties does not bar the criminal action taken by the complainant against the applicant with regard to forgery of the document and both the proceedings can run simultaneously and on this ground the criminal

complaint filed by the complainant cannot be quashed. Therefore, prayed for dismissal of the petition.

7. After consideration of the rival contentions of learned counsel for the parties it is apparent that a civil suit is pending in between the parties wherein the complainant prayed for cancellation of the alleged will executed in favour of the present applicant Pan Singh; that civil suit is registered as Civil Suit No. 73A/08, which is pending before the Civil Judge Class-2 Mehgaon. On perusal of the copy of the plaint of civil suit, the relief has been claimed by the complainant with regard to the declaration of the ownership on the land concerned and also the relief of possession and prayed for a declaration to the effect that the alleged will dated 18.4.2008, which is in favour of the present applicant Pan Singh, is null and void because of forgery. Thus, on perusal of the relief claimed in the civil suit it is apparent that the fact in issue is in consideration of the Civil Court as to whether the will which is shown by the applicant Pan Singh in his favour is a forged document or not. Therefore, the finding given by the Civil Court is binding on the criminal court and, therefore, the continuation of criminal proceedings against the applicant is found to be premature. The complainant can file the complaint for forgery of the document only after a definite finding given by the competent Civil Court that the alleged will was being got executed by the applicant Pan Singh due to some forgery and forged signature of the executor/husband of the complainant and, in such circumstances, the registration of the FIR against the applicant is prima facie found to be a premature criminal action by the police on the report of the complainant.

8. For the aforesaid proposition the reliance can be placed on the decision of the Hon'ble Apex Court in **Mohammed Ibrahim and others vs. State of Bihar and another**, reported in **(2009) 8 SCC 751**, wherein the Hon'ble Apex Court while discussing about the maintainability of a criminal complaint registered under Sections 420, 467 and 471 of IPC, held here as under:-

**"7. The question that therefore arises for**

consideration is whether the material on record prima facie constitutes any offences against the accused. The contention of the appellant is that if the allegations made in the complaint and FIR, even if accepted to be true in entirety did not disclose the ingredients of any offence of forgery (Sections 467 and 471) or cheating (Section 420) or insult (Section 504) or wrongful restraint (Section 341) or causing hurt (Section 323) and there was no other material to show any offence and therefore, their application ought to have been accepted.

8. This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes.”

9. The same view has been reiterated in another decision by the Hon'ble Apex Court in **V.Y.Jose and another vs. State of Gujarat and another**, reported in **(2009) 3 SCC 78**, wherein the Hon'ble Apex Court held here as under:-

“21. There exists a distinction between pure contractual dispute of a civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever that in the absence of the averment made in the complaint petition wherefrom the ingredients of an offence can be found out, the court should not hesitate to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure.

22. We may reiterate that one of the ingredients of cheating as defined in Section 415 of the Penal Code is existence of an (*sic* fraudulent or dishonest) intention of making initial promise or existence thereof from the very beginning of formation of contract.

23. Section 482 of the Code of Criminal Procedure saves the inherent power of the court. It serves a

**salutary purpose viz. a person should not undergo harassment of litigation for a number of years although no case has been made out against him.**

**24. It is one thing to say that a case has been made out for trial and as such the criminal proceedings should not be quashed but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all."**

10. In view of the aforesaid decision of the Hon'ble Apex Court it is apparent that the correctness of the alleged will is to be considered by the competent Civil Court in the concerning civil suit and the finding of Civil Court is binding in between the parties. Therefore, the registration of the FIR before the finding of the competent Civil Court is found to be premature and complainant is free to file the criminal complaint after the decision of the Civil Court. If the Civil Court comes to the conclusion that the alleged will has been got executed by the applicant Pan Singh with some ulterior motive and by forgery then only the complainant gets the cause of action for filing of the criminal complaint for the said forgery against the applicant. Therefore, at this stage registration of the FIR against the complainant is found to be erroneous and on this very ground the FIR can be quashed at this stage.

11. For exercise of powers conferred under Section 482 of Cr.P.C. the principles laid down by the Hon'ble Apex Court in a leading case of **State of Haryana and others vs. Bhajanlal and others**, reported in **1992 SCC (Cri) 426**, are relevant for resolution of the dispute in the present case also, wherein the Hon'ble Apex Court has laid down certain principles for exercise of powers under Section 482 Cr.P.C. and held here as under:-

**"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."**

12. On perusal of the aforesaid guidelines prescribed by the Hon'ble Apex Court, it is apparent that the clause (1) and (5) squarely cover the facts of the present case that when the said will which is alleged to be forged by the applicant is in consideration of a competent Civil Court then certainly the FIR does not disclose any cognizable offence against the applicant at this stage, therefore, the FIR can be quashed in exercise of the powers conferred under Section 482 of Cr.P.C. .

13. Resultantly, the petition filed on behalf of the applicant is allowed. The FIR registered against the applicant as Crime No.114/08 by Police Station Gormi district Bhind for the offence under Sections 420, 467, 468 and 471 of IPC is hereby quashed, but it is made clear that after the decision of the Civil Court with regard to the alleged will the complainant is free to move again against the applicant if the competent Civil Court finds and comes to the conclusion that the said will is found to be forged one.

**(S.S.DWIVEDI)  
JUDGE.**

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