

IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

CRR No. 27/2016

Reserved on 23.03.2021.
Pronounced on 02.04.2021

Mst. Gulshan Begum &Ors. ...Petitioner(s)

Through: Ms. Arshie Zuhar, Adv.

Vs.

Hafiz Qazafi Khan ...Respondent(s)

Through: Mr. Showkat Ali Khan, Adv.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The present petition has been filed for quashing of the order dated 19th September 2015 passed by the learned Munsiff/Magistrate Bandipora (hereinafter referred to as the 'Magistrate) wherein the learned Magistrate has rejected the application of the petitioners under Section 195 read with Section 476 Cr.P.C for initiation of preliminary enquiry against the respondent for commission of offences by the respondent under Section 193, 196, 179, 198, 199, 203, 209, 210, 211 and also under Sections 464, 467, 468, 471, 474, 477, 477-A of RPC read with Section 120-B of RPC as the forged Will was prepared by the respondent after the death of his father Mohammad Maqbool Khan.
2. The necessary facts for the disposal of the present petition are that the petitioners 1 to 4 are daughters of the deceased Mohammad Maqbool Khan and sisters of respondent and the petitioner No. 5 is the widow of the deceased.
3. It is stated that the petitioners and the respondent jointly owned movable as well as immovable properties left by deceased Mohammad Maqbool Khan and these properties included a residential house and landed property measuring 15 kanals and 9 marlas

comprising Survey No. 662, 663, 788, 791, 1106 and 1107 situated at Panzigam Bandipora.

4. After the death of Mohammad Maqbool Khan, it is alleged that the respondent with ulterior motive to grab the property of the petitioners resorted to hooliganism and even assaulted the petitioner No. 5 and thereafter respondent filed a suit before the court of Munsiff, Bandipora for declaration, partition, possession and perpetual injunction. It is further stated that the learned Munsiff without giving a rightful hearing to the petitioners, issued an order of status quo with regard to the suit property by virtue of order dated 28th May 2011. Thereafter, the respondent filed an application for withdrawal of the suit to file a fresh suit, however, the said prayer of the respondent was declined and thereafter the respondent with nefarious intention to grab the rightful share of the petitioners, laid a motion under Order 6 Rule 17 for amendment of his plaint on the ground that he has come across a document having been executed by his deceased father Mohammad Maqbool Khan before his death on 2nd March 2011, whereas, in fact, no such Will has ever been executed by the deceased. It is further stated that the said forged Will was not known to anyone, neither from the respondent side nor from the side of the petitioners, but the respondent produced a forged Will before the learned court and the learned court without enquiring into the mode, manner or execution, allowed the amendment of the plaint, thereby causing miscarriage of justice vide order dated 20th June 2012.
5. The petitioners aggrieved of the said order filed an appeal before the court of learned Principal District Judge Bandipora, but the learned Principal District Judge dismissed the said appeal and upheld the order dated 20th June 2012. Thereafter, the petitioners filed an application before the learned trial court for initiation of preliminary enquiry against the respondent and others for the commission of offence mentioned supra. The learned Munsiff Bandipora vide order dated 19th September 2015 disposed of the said application filed by

- the petitioners on the sole ground that the issue shall be taken up at the later stage of the trial.
6. The petitioners have assailed the said order on the ground that the order impugned passed by the learned Munsiff, Bandipora is an abuse of process of law and has caused miscarriage of justice to the petitioners on the ground that the learned Munsiff has recorded satisfaction on the authenticity of the Will without making any inquiry into the veracity of the Will and without taking into account the dramatic way and story by which the forged Will was produced before the learned court. That it was expedient in the interest of justice that an enquiry should have been ordered into the offence of forged Will and in conducting the preliminary enquiry, the court was not required to afford any opportunity to the respondent-accused, the court should have conducted preliminary enquiry as the respondent by executing the forged Will has not only cheated the petitioners but the public at large and has misguided the process of law. So, on these grounds only, the order impugned has been assailed.
 7. Ms. Arshie Zuhar, learned counsel for the petitioners has vehemently argued that as the respondent have produced the forged Will before the Court, so he was required to be proceeded under Section 195 Cr.P.C and for that purpose, the court was under obligation to hold the enquiry in terms of Section 476 Cr.P.C.
 8. *Per contra*, Mr. Showkat Ali Khan, learned counsel for the respondent has vehemently argued that the order impugned has been passed well within the domains of law and the enquiry as contemplated under Section 476 Cr.P.C could not have been ordered to be conducted in the present case as it was not the case of the petitioners that the Will was forged after the same was filed in the Court.
 9. Heard and perused the record.
 10. Before appreciating the rival contentions of the parties, it would be appropriate to take note of Section 195 Cr.P.C and Section 476 Cr.P.C. The same are reproduced hereunder:-

195. Non-Cognizance

(1) No Court shall take cognizance

(a) xxx

(b) xxx

(c) prosecution for certain offences relating to documents given in evidence. – Of any offence described in section 463 or punishable under Section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other court to which such Court is subordinate.

(2) xxx

(3) xxx

(4) xxx

(5) xxx

476. Procedure in cases mentioned in section 195.

(1) When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in section 195, subsection (1), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate :

Provided that, where the Court making the complaint is the High Court, the complaint may be signed by such officer of the Court as the Court may appoint :

[Provided further that in any other case, by the Presiding Officer, of that court or by such officer of the court as that court may authorize in writing in this behalf].

(2) xxx

(3) xxx

11. The sole contention raised by the petitioners in the present petition is that once an application is filed by the petitioner regarding the submission of the forged Will, it was obligatory on the part of the learned trial court to hold a preliminary enquiry with regard to the contention raised by the applicant.
12. The perusal of Section 476 Cr.P.C reveals that it begins with the title procedure in cases mentioned in Section 195Cr.P.C, meaning thereby that Section 476 Cr.P.C prescribes the procedure to be adopted for the purpose of filing of complaint with regard to the commission of offences as mentioned in Section 195 Cr.P.C.
13. The scope of the preliminary enquiry as envisaged under Section 476 Cr.P.C is to ascertain as to whether any offence affecting the administration of justice has been committed in respect of a document produced in a court or given in evidence in proceeding in that court, meaning thereby that the offence should have been committed during the time when the document was in *custodia legis*.
14. The Constitution Bench of the Supreme Court in the case ***Iqbal Singh Marwah & Anr. vs. Meenakshi Marwah & anr*** reported in (2005) 4 SCC 370 has held as under:-

“33. In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.P.C would be attracted only when the offences enumerated in the said provision have been

committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e., during the time when the document was in *custodia legis*.”

15. As such, as per the law laid down by the Apex Court when the offences mentioned in Section 195(1)(b) and (c) Cr.P.C have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in *custodia legis*, then only the provision under Section 195 Cr.P.C can be attracted. Section 476 Cr.P.C provides the procedure to be followed in case of commission of offences as mentioned in Section 195 Cr.P.C. Therefore, the application filed by the petitioners before the trial court was misconceived as it was not the case of the petitioners that the document was forged when the same was *custodia legis*. Otherwise also, the perusal of the order impugned reveals that the learned trial court has already framed an issue with regard to the execution of the will and the present application as such was rightly dismissed by the learned trial court.
16. In view of this, this court does not find any reason whatsoever to interfere with the order passed by the trial court, as such, the order passed by the trial court is upheld and the petition filed by the petitioners being misconceived is **dismissed** accordingly.

(RAJNESH OSWAL)
JUDGE

SRINAGAR
02.04.2021
Altaf

Whether the order is speaking: Yes/No

Whether the order is reportable: No