

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR**

**BEFORE**

**HON'BLE SHRI JUSTICE ANAND PATHAK**

**ON THE 13<sup>th</sup> OF SEPTEMBER, 2024**

**MISC. CRIMINAL CASE NO. 44618 of 2023**

**NEETUMAL**

**Vs.**

**STATE OF MADHYA PRADESH & ANR.**

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**APPEARANCE:**

*Ms. Bhavya Sharma – Advocate for the petitioner.*

*Shri Vijay Sundaram – Public Prosecutor for respondent  
No.1/State.*

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**ORDER**

1. The present petition under Section 482 of Code of Criminal Procedure, 1973 is preferred at the instance of petitioner/accused seeking following relief:

*“1. Petitioner therefore, begs to pray that this petition kindly be allowed and the FIR (Annexure P-1) registered by the Police Station Kotwali, Vidisha as Crime No.319/2021 wherein offences under Sections 420, 467, 468, 471 and 34 of IPC are registered and any other consequential proceedings thereto kindly ordered to be quashed”*

2. Through this petition, petitioner is seeking quashment of FIR which was registered against them on 07-07-2021 vide Crime No.319/2021 for the alleged offence under Section 420, 467, 468, 471, and 34 of IPC. For last more than 2 years, investigation is pending and charge-sheet has not been filed.

3. As per FIR, period of offence oscillates between 12-05-1987 to 31-12-2020. On 07-07-2021 one application was filed by Hukumchand Balecha S/o Shri Surajmal Balecha (respondent No.2 herein) with the allegations that Surajmal Balecha was owner of survey No.1537/2, 1538/2, 1540/1 situate at Vidisha and loan was obtained on 18-04-1978 by Surajmal Balecha from State Bank of India for the purpose of purchasing the property. That loan was in existence at the relevant point of time.
4. From the FIR it appears that allegations are against Shrichand Bhau, Rajendra Kumar and present petitioner Neetumal. According to complainant his father Surajmal Balecha died on 10-03-2008 and before that on 04-03-2008 a will was executed by his father in favour of complainant Hukumchand Balecha as well as his brother Bhagwandas Balecha. For better understanding the factual details, petitioner has placed the dates and events involved in the case in tabular representation and same is reproduced for ready reference:

S.No.	Date	Event
1	12/05/87	One Shrichand Bhau purchased land of survey No.1540/1 from Surajmal Balecha. Present complainant has given his no objection on sale deed
2	12/05/87	Rajendra Kumar purchased land of survey No.1540/1 and 1538/2 from Surajmal Balecha. Present complainant has given his no objection on sale deed
3	07/10/88	Civil Suit No.4-A/2011 (earlier No.83-A/89) was filed by Hariram who was real brother of Surajmal about the

		property in question. In the civil suit it was pleaded that the disputed property is of joint ownership and therefore it could not have been sold to Shrichand Bhau and Rajendra Kumar.
4	17/01/90	Surajmal filed written statement and pleaded that the property is his self acquired property and sale deed done by him in favour of Shrichand Bhau and Rajendra Kumar are not bad in law and he has voluntarily executed the sale deed.
5	20/04/2007	Surajmal Balecha executed will in favour of petitioner which is under question.
6	20/09/13	Civil Suit No.4-A/2011 (earlier civil suit No.83-A/1989) was dismissed by learned Second Civil Judge Class -I, Vidisha and found that sale deed executed by Surajmal in favour of Shrichand Bhau and Rajendra Kumar are valid. Complainant was party in the civil suit.
7	29/10/13	Hariram filed civil appeal before learned Fifth Additional Judge to the Court of First Additional District Judge, Vidisha against judgment and decree dated 20-09-2013
8	27/03/19	Petitioner filed a petition for mutation on the basis of will executed by late Surajmal, however, this Court dismissed the petition and granted liberty to get the rights adjudicated in the civil suit.
9	12/07/19	Civil Appeal No.79-A/2015 was allowed by learned appellate Court and remanded the matter back to the learned trial Court with the direction to decide the case again in the light of the will propounded by Neetumal.
10	25/06/21	Tahsildar ordered for mutation of name of Shrichand Bhau and Rajendra Kumar on the basis of sale deeds.

11	28/09/21	Petitioner filed an application for compromise and prayed for withdrawal of suit
12	28/09/21	Learned trial Court permitted the suit to be withdrawn
13	28/10/23	Private complaint filed by complainant/respondent No.2 against petitioner got rejected.

5. The present FIR has been lodged by the complainant Hukumchand, who is cousin (brother) of the petitioner levelling the allegations that petitioner has prepared a forged registered will dated 20-04-2007 allegedly executed by complainant's father Surajmal Balecha while his father has executed a will in favour of complainant and his brother namely Bhagwandas Balecha on 04-03-2008. Surajmal Balecha was owner of survey No.1537/2, 1538/2, 1540/1 situate at Vidisha. It is further alleged that no sale deed has been executed by his father – Surajmal Balecha in favour of Shrichand Bhau and Rajendra Kumar and these sale deeds are forged and fabricated documents and obtained by playing fraud.
6. Apart from bequeathing the property by late Surajmal Balecha to the petitioner as well as complainant, the said property was sold by him to Shrichand Bhau and Rajendra Kumar. Against those sale deeds, Civil Suit No.4-A/2011 (earlier No.83-A/89) was filed by Hariram who was real brother of Surajmal Balecha taking the plea that the disputed property is of joint ownership and therefore it could not have been sold. Surajmal himself filed written statement and thereafter trial Court dismissed the suit holding that sale deeds executed by Surajmal are valid. Complainant was party in that civil suit. Hariram filed civil appeal and since in that civil appeal, petitioner produced his will, therefore, matter was remanded to the trial Court and thereafter that matter was compromised between the

parties.

7. It is the submission of learned counsel for the petitioner that prior to lodging the FIR brother of complainant namely Bhagwandas Balecha preferred a private complaint against the present petitioner on 26-10-2015 levelling the allegations that petitioner has prepared a forged will dated 20-04-2007 in order to grab the land of his father – Surajmal Balecha while his father has executed the will dated 04-03-2008 in favour of him and his brother (present complainant). That complaint was dismissed by the trial Court on 28-10-2023 holding that no case is made out against the present petitioner.
8. It is further submitted that since on the same set of allegations, the complaint preferred against the petitioner was dismissed by the trial Court vide order dated 28-10-2023 in S.T.No.21/2018, therefore, on the same set of allegations, the FIR which has been registered against the petitioner is amounting to double jeopardy as envisaged under Article 20 of the Constitution and Section 337 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (Section 300 of Cr.P.C.). The present FIR is lodged after 14 years of execution of will in favour of present petitioner.
9. It is worth mentioning the fact that two other accused persons namely Shrichand Bhau and Rajendra Kumar (in whose favour sale deeds were executed by Surajmal Balecha) preferred a petition before this Court which was allowed by this Court in the case of **Shrichand Bhau & Anr. Vs. State of M.P., 2023 SCC Online MP 2077** and the FIR registered against them has been quashed. In this case, this Court held that a civil transaction is tried to be converted into criminal case. Thus, prayed for quashing of the FIR.
10. Learned counsel for the respondent/State opposed the submissions

made by the petitioner's counsel but he fairly conceded the fact that the FIR in question has already been quashed for the other two accused persons namely Shrichand Bhau and Rajendra Kumar.

11. Heard learned counsel for the parties and perused the documents appended thereto.
12. This is a case where petitioner is facing the allegation of preparing a forged will allegedly executed by late Surajmal Balecha. According to factual matrix, prior to lodging the present FIR two rounds of litigation between the parties have already taken place; **one** of civil nature preferred by brother of Surajmal namely, Hariram claiming the disputed property to be of joint ownership and **second** private complaint preferred by brother of present complainant namely Bhagwandas Balecha. Both the proceedings failed against the petitioner.
13. There are two Wills of late Surajmal; one in favour of present petitioner and another in favour of complainant and none of the parties propounded the will before the civil Court while for the property in question, late Surajmal Balecha himself executed the sale deeds in favour of Shrichand Bhau and Rajendra Kumar, therefore, once the complainant lost both the battles, thereafter, he lodged the present FIR against the petitioner. Complainant tried to establish his case on the basis of Will dated 04-03-2008 allegedly executed by his father Surajmal Balecha in his favour but he did not propound it before the Civil Court.
14. In the case of Shrichand Bhau (supra) preferred by the other co-accused Shrichand Bhau and Rajendra Kumar, this Court made a detailed discussion while taking into consideration the facts and circumstances of the case. In said case, the FIR against two accused

persons (in whose favour sale deeds were executed by Surajmal Balecha), has been quashed and in the present case, petitioner is facing the allegation in relation to preparing a forged will executed by Surajmal Balecha while the said will has not been found to be forged by any of the Court. Further the will on the basis of which, complainant is trying to put his case, that will was not even produced by the complainant before any of the Courts.

15. Validity of will can be decided by the Civil Court only. The Apex Court in the case of **Sardool Singh and another Vs. Smt. Nasib Kaur, 1987 (supp) SCC 146** dealt with the issue. This judgment is further relied by the Apex Court itself in the case of **M. Srikanth Vs. State of Telangana and another, (2019) 10 SCC 373**. In **Sardool Singh and another (supra)**, the Apex Court held as under:

*“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.”*

16. The delay occurred in the present case is also material as after registration of FIR in the year 2021, police kept silent and no proceedings took place in the matter. Further, the will for which the allegation of forgery is made against the petitioner was executed in the year 2007 while the FIR has been registered in the year 2021 and for such delay, no explanation has been given by the complainant. This also goes against the complainant.
17. The Apex Court in the matter of **State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604** laid down the different exigencies under which interference under Section 482 of Cr.P.C. can be made. The case of petitioners falls within those exigencies. The aforesaid law has further been dealt with by the Apex Court in the case of **Rajiv Thapar and others Vs. Madanlal Kapoor (2013) 3 SCC 330. 47.**
18. In the conspectus of facts and circumstances of the case, the petition preferred by the petitioner is allowed in view of the order passed in the case of **Shrichand Bhau and another (supra)** and the discussion



made above. FIR (Annexure P-1) registered at Police Station Kotwali, Vidisha at Crime No.319/2021 for offence Sections 420, 467, 468, 471 and 34 of IPC is hereby quashed.

**19. Petition stands allowed and disposed of.**

**(ANAND PATHAK)  
JUDGE**

Anil\*