

**IN THE HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE.**

**SINGLE BENCH : HON'BLE SHRI JUSTICE ALOK VERMA**

**M.Cr.C.NO.547/2016**

Dr. Mukesh Nigam and others

Vs.

State of Madhya Pradesh and another

---

Shri Naveen Sharma, learned counsel with Shri R.S.Raghuvanshi,  
learned counsel for the petitioners.

Shri Pankaj Wadhvani, learned counsel for respondent no.1/State.

Shri Yogesh Dwivedi, learned counsel for respondent no.2.

---

**ORDER**

**(Passed on this 21<sup>st</sup> day of September, 2016)**

This application is filed under Section 482 Cr.P.C. for quashment of FIR and charge sheet arising out of crime no.698/2015, Police Station Banganga, district Indore in which alongwith other co-accused, the petitioners are also arrayed as accused.

2. The relevant facts that emerge from the record are that the disputed land situated in village Jakhia, Tehsil Sanwer was recorded in the name of Smt. Anandi Bai, who died in the year 2000. Late Anandibai and her husband Keshorai had six sons. The eldest son Chaturbihari @ Chaturbhuj Nigam is husband of petitioner no.2 and father of petitioner nos.1 and 3. After death of Anandibai in the year 2000, her six sons filed an application for

mutation before the Tehsildar excluding seven sisters, including respondent no.2. It is further alleged that respondent no.2 married against the wishes of her parents late Keshorai and Anandibai and therefore, she was disowned by them and also she was excluded from the family property. However, it is an admitted fact that both Keshorai and his wife died intestate.

3. According to respondent no.2, she came to know about the mutation application filed by her brothers only in the year 2010 and then she filed an appeal before the Sub Divisional Officer, interim stay was granted against all six brothers restraining them from selling the suit property. A final order was also passed in favour of respondent no.2, in which it was held that respondent no.2 has  $1/13^{\text{th}}$  share alongwith her brothers and sisters who were 13 in number including respondent no.2. Subsequently, it was alleged by respondent no.2 that petitioners sold part of the disputed land showing themselves owner of  $1/6^{\text{th}}$  share, while they were only having  $1/13^{\text{th}}$  share and thereby committed criminal offence under Section 420/34 of IPC.

4. Petitioner no.1 and other accused persons applied for grant of anticipatory bail. They were granted anticipatory bail by the Court of Additional Sessions Judge. After investigation, charge sheet was filed against them and bailable warrant was issued by the concerning Court.

5. This application is filed on the ground that :(i) it was purely a civil dispute and therefore criminal proceedings should be

quashed (ii) the property was sold before passing of the final order by the Revenue Court on 28.09.2012. At that time, 1/6<sup>th</sup> Share was recorded in the revenue records and therefore, there was no *mens rea* (iii) petitioner no.1 was not a party before the Revenue Court. He was deliberately not made a party by the respondent no.2 and therefore, it cannot be presumed that he was having knowledge of the proceedings before the revenue Court. (iv) There was no entry in respect of respondent no.2 about her share in the suit property. The name of father of petitioner nos.1 and 3 and husband of respondent no.2 was entered in the revenue records and after his death in the year 2008, name of the petitioners were recorded and therefore, it is prayed that in view of the various judgments of Hon'ble Supreme Court, there is no criminal case made out against the petitioners and the proceedings should be quashed.

6. The application is vehemently opposed by the Counsel for respondent no.1./State as well as respondent no.2. According to the reply of respondent no.2, the petitioners had full knowledge that there were 13 issues of late Keshorai and Anandibai. Seven sisters alongwith six brothers were also inherited the property in equal share. The petitioners knew that there was no will left by late Anandibai or her husband Keshorai and therefore, after they died intestate, the property left by them should be distributed in equal shares between brothers and the sisters. After the death of Anandibai, surreptitiously all the six brothers got their name mutated. Coming to know about the mutation in the year 2010,

respondent no.2 filed a civil suit against all the brothers and sisters claiming 1/13<sup>th</sup> share in the property left by late Anandibai. She also filed a suit for cancellation of the sale deed executed by the petitioners showing their share as 1/6<sup>th</sup> while they were having 1/13<sup>th</sup> share. All these facts clearly show that they had dishonest intention to deprive respondent no.2 of the property left by their father.

7. Learned counsel for the petitioners places reliance on the judgment of Hon'ble the Apex Court in the case of **Indian Oil Corporation Vs. NEPC India Limited and others (2006) 6 SCC 736**. In para 12 of this judgment, the Hon'ble Apex Court observed as under:-

"12.....

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

8. Learned counsel for the petitioners cites judgment of Hon'ble Apex Court in the case of **Madhavrao Jiwajirao Scindia**

**and others Vs. Sambajirao Chandrojirao Angre and others****(1198) 1 SCC 692.** In paras 7 and 8 of the judgment, the

Hon'ble Apex Court observed as under:-

“7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

8. Mr. Jethmalani has submitted, as we have already noted, that a case of breach of trust is both a civil wrong and a criminal offence. There would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. We are of the view that this case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting. Several decisions were cited before us in support of the respective stands taken by counsel for the parties. It is unnecessary to refer to them. In course of hearing of the appeals, Dr. Singhvi made it clear that Madhavi does not claim any interest in the tenancy. In the setting of the matter we are inclined to hold that the criminal case should not be continued.”

9. This apart, learned counsel also places reliance on the judgments of Hon'ble the Apex Court in the cases of **Devendra and others Vs. State of Uttar Pradesh and another (2009) 7 SCC 495** and **Paramjeet Batra Vs. State of Uttarakhand and others (2-13) 11SCC 673**.

10. In the present case, it is admitted that six brothers excluded seven sisters and got the land mutated in their name. It is also admitted that the present petitioners sold 1/6<sup>th</sup> portion of the land by registered sale deed. The peculiar facts in the present case are that the brothers from the very beginning knew that there were seven sisters also. No consent was taken from the respondent no.2. She was never informed and surreptitiously the land was mutated in the names of all the six brothers. The contention of the learned counsel for the petitioners that the land was sold by them, their names were recorded as owner of 1/6<sup>th</sup> share, however, the fact remains that revenue records are not records of title. When Anandibai died in the year 2000, 1/13<sup>th</sup> share devolved upon respondent no.2. Mere entry in the revenue record do not extinguish the right already accrued to respondent no.2, therefore, the argument raised by learned counsel for the petitioners that the land was sold by them and they were owner of 1/6<sup>th</sup> share is not acceptable. In the revenue proceedings, petitioner no.2 was one of the party. She acted on behalf of the petitioners no.1 and 3 before the Police Station, However, now the plea is taken independently

by petitioner no.1 that he was not party to the proceedings, and therefore, he had no knowledge about the revenue proceedings.

11. In view of the aforesaid, the contents of the FIR shows that there was a dishonest intention on the part of all the six brothers. At this stage, no case is made out for quashment of the FIR and related proceedings using extra ordinary jurisdiction conferred on this Court under Section 482 Cr.P.C.

Accordingly, this application is devoid of force and liable to be dismissed and is hereby dismissed.

C.C.as per rules.

**(ALOK VERMA)**  
**JUDGE**

**RJ/**