

ORDER BELOW EXH. 04 IN CRI.REV.APPL.NO. 21/2015.

Present revision application is under Sec.397 of Cr.P.C. against the order passed by J.M.F.C., Jaysingpur in Cri.Misc.Appln.No.197/2014.The offence is alleged against revision applicants of the offence punishable u/s. 465, 467, 468, 471, 474 r.w.34 of Indian Penal Code.

2] The applicants contend that J.M.F.C., Jaysingpur passed order to investigate the offence as per Sec.156(3) of Cr.P.C. The applicants claim that it is passed mechanically without applying judicial mind. Late Dr.J.J. Magdum owned various properties and was founder of Dr.J.J. Magdum Trust, Jaysingpur. It is alleged by respondents that his bogus Will is prepared on 27.7.2012 taking duplicate signature of Dr.Magdum. It is also mentioned in the complaint that civil litigations are pending between Trust, applicants and other heirs of Dr.J.J.Madum. His bogus medical certificate is prepared. Dr.J.J. Magdum was not at Peth Vadgaon but in conspiracy by bogus medical certificate is prepared. Learned J.M.F.C. wrongly interpreted the legal provisions without applying judicial mind. Apparently it is incorrect order. The

revision applicant has chance of success in revision. If stay to the order of J.M.F.C. is not granted and proceeding before J.M.F.C. is continued it will cause miscarriage of justice and the very purpose of filing this revision will be frustrated. So prayed to stay the order of J.M.F.C. and record and proceeding of trial court be called.

3] Heard learned advocate for applicant. He claims the grounds in main application that very wrong order is passed by trial court without supporting any evidence. The complaint initially was filed before Superintendent of Police, Kolhapur and Shirol Police have already made detail investigation and recorded statements of respondent and co-accused and concluded that there is civil dispute between the parties and so complaint was disposed of. Present case is falsely failed to pressurize the trust authorities and servants. In the argument learned advocate for applicant claims that complaint and alleged accused/applicants are legal heirs of late Dr.J.J. Magdum and trustees. The basic cause is about Will deed about which suit for declaration is pending. All the contentions in the complaint are not true. So prayed to quash and set aside the order of J.M.F.C. and to stay the further proceeding before trial court.

4] He relied the rule M/s.Thermax Ltd. Vs. K.M.Johny & Ors. 2011 ALL MR (Cri) 3603 (S.C.). The ratio is guiding that criminal proceeding and civil dispute is pending. If there is flevour of civil nature same cannot be agitated in the form of criminal proceeding. In further rule Wallace Joseph Hayden Vs. State of Maharashtra 2007 ALL MR (Cri) 3401. The ratio is about offence u/s. 467, 469, 471, 420 IPC etc. It is observed that simultaneous civil and criminal proceeding pending. Dispute was about rent receipts whether forged or not. I have read the rules. The ratio in rules are altogether on different set of facts and not helpful to the applicant in present case. Suit for declaration etc. is altogether different fact. Whether said document is genuine or false can be decided in civil proceeding is true. Anyhow, if it is false then criminal liability will not escape. Anyhow allegations as regards other persons cannot be brushed away if criminal liability arises. It is true initially such complaint was filed at Superintendent of Police and it was sent to concerned police station which was inquired and disposed of stating that it is civil dispute. Anyhow, yet it is about alleged will-deed and its genuineness question can also be dealt with. Present complaint is after its due investigation. So investigation cannot be stopped presently. So also the respondents need to be heard. So no such stay to the proceeding and quashing of the order by present application can be done and is not necessary.

5] Perusal of order of J.M.F.C. reveals that he has dealt with contentions of complaint and though another complaint was filed by Superintendent of Police but seems no action is taken by police. It is also reference of other will deeds etc. So J.M.F.C. found prima facie substance in the allegations about two will-deeds and difference in signature etc. and its contents. To find out truth he ordered investigation u/s.156(3) Cr.P.C. All those observations do not seem arbitrary and without application of mind. No gross illegality found presently to stay the order challenged under present revision application and to stay it presently by order below Exh.4 by calling record and proceeding. Hence stay cannot be granted. In view of it I pass the following order.

ORDER.

1] The application is hereby rejected.

Dictated and declared on dais.

Jaysingpur.
Dt.17-06-2016.

Sd/-
(S.D. Jagtap),
Addl.Sessions Judge, Jaysingpur.