

Mohan Lal and Others

Vs

The State of Rajasthan and Another

Criminal Appeal No. 116 of 1970

(M. H. Beg, Y. V. Chandrachud JJ)

21.11.1973

JUDGMENT

CHANDRACHUD, J. -

1. A private complaint was filed by one Rameshwarlal son of Laduram against the appellants under Section 464, 467, 468 and 471 of the Penal Code. The appellants took a preliminary objection that the Court was incompetent to take cognizance of the offences by reason of the provisions contained in Section 195(1)(c) of the Code of Criminal Procedure. The objection was rejected by the learned Magistrate, the Sessions Court refused to make a reference to the high Court and High Court of Rajasthan dismissed the revision petition filed by the appellants. This appeal by special leave is directed against the judgment of the High Court.

2. The complainant Rameshwarlal alleges that the appellants forged the will of one Kharturam, produced it before the Patwari and used it as a piece of evidence in support of their title to a land. It is not quite clear from the complaint, but the parties seem to have proceeded on the basis that the Tehsildar directed that entries be made in the Record of Rights in the names of the appellants of the strength of the will.

3. It is difficult on these facts to invoke the application of Section 195(1)(c), Criminal Procedure Code. It provides that no Court shall take cognizance 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 a 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. In *Patel Laljibhai Somabhai v. State of Gujarat*, ((1971) Supp SCR 834 : (1971) 2 SCC 376 1971 SCC (Cri) 548) it was held by this Court that in order to attract Section 195(1)(c), the offence should be alleged to have been committed by the party to the proceeding in his character as such party, i.e., after having become a party to the proceeding. This decision was recently followed in *Raghunath and Ors. v. State of U. P.* ((1973) SCC 564 : 1973 SCC (Cri) 448)

4. The allegation of the complainant is that the appellants forged a will in the name of Kharturam and thereafter produced it either before the Patwari or the Tehsildar in the mutation proceedings commenced by them on the strength of the will. The forgery therefore is alleged to have been committed by the appellants not after they became parties to the mutation proceedings but prior to the commencement of those proceedings. Section 195(1)(c) can therefore have no application at least in regard to the offences under Section 464, 467 and 468, Penal Code.

5. Different considerations may, perhaps arise in regard to the offence under Section 471 of the Penal Code for the allegations made by the complainant may reasonably be susceptible of the construction that the offence of using a forged document as genuine which is made punishable under Section 471 was committed by the appellants in their capacity as parties to a mutation proceedings. That, however, raises the further question whether the will was "produced or given in evidence" in a proceeding in any "Court", within the meaning of clause (c). We do not propose to enter into that question, because the learned Magistrate is in any even entitled to take cognizance of the offences alleged to have been committed by the appellants under Section 464, 467 and 468 of the Penal Code. On the allegations contained in the complainant, the offence under Section 471 is only a sequitur to the other offences. If the complainant succeeds in proving the other offences, it would be academic to consider whether the learned Magistrate can take cognizance of the offence under Section 471 because it is hardly likely that a separate sentence would - be imposed for that offence. On the other hand, if the charge in regard to the other offences fails, the one in regard to Section 471 would necessarily fail in the light of facts stated in the complaint.

6. For these reasons we dismiss the appeal and direct the learned Magistrate to proceed with the complaint on the basis that it is competent to him to take cognizance of the offence under Section 471 also. That is the view which the High Court has taken. It would be open to the appellants, at the appropriate stage, to agitate before this Court the question whether in view of the provisions of Section 195(1)(c), Criminal Procedure Code, it was competent to the learned Magistrate to take cognizance of the offence under Section 471, Penal Code. We have kept that question open.

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