

State of U. P.

Vs

Suresh Chandra Srivastava and Others

Criminal Appeal Nos., 466-466 of 1980

(Syed M. Fazal Ali, A. Varadarajan, Ranganath Misra JJ)

03.05.1984

JUDGMENT

FAZAL ALI, J. -

1. These appeals by special leave arise out of a judgment dated January 9, 1979 of the Allahabad High Court refusing to quash the proceedings in toto which were pending before the Chief Judicial Magistrate, Allahabad in exercise of the powers under Section 482 of the Code of Criminal Procedure 1973 (hereinafter to be referred to as the Code). The High Court however, quashed the proceedings only in respect of offences under Section 467, 471 and 120-B of the Indian Penal Code and directed prosecution of the respondents in respect of the other offences to proceed according to law. In order to understand the implication of the judgment of the High Court it may be necessary to narrate a few facts.

2. It appears that some time in the year 1967 Shankar Lal Bhargava who was officiating as Stamp Reporter in the Registry of the Allahabad High Court, with the aid of Suresh Chandra Srivastava and Bishan Swarup who were clerks of Advocates removed used stamps and out of them reused three court-fee stamps of the value of Rs. 1000 each in First Civil Appeal Nos, 281/67, 282/67 and 357/67. When the matter was detected and enquiry was ordered and the Judicial Department of the High Court reported to the Registrar that court-fee stamps of the value of Rs. 23,007.50 p. (on 15 sheets) were missing from the judicial file of First Appeal No 186 of 1960. The enquiry further revealed that in several other cases also court-fee stamps has been taken out form the original files and reused in new cases. The Registrar of the High Court suspected that a well-organized gang of racketeers was operating in the High Court to defraud the Government by surreptitiously removing the used stamps from the judicial files and reusing them in new cases. The Registrar, with the permission of the Chief Justice of the High Court reported the matter to the Inspector-General of Police U. P who ordered the Criminal Investigation Department of U. P. to investigate into the matter and ultimately three charge-sheets were submitted for offences under Section 262, 263, 467, 471, 420 and 120-B of the Indian Penal Code.

3. The respondents filed an application before the High Court contending that as offences under Section 467, 471 and 120-B I P C fell within the purview of Section 195 of the Code, no prosecution could be launched without the procedure laid down in Section 195 being followed. It is common ground that no complaint as required by the mandatory provisions of Section 195 of the Code having been made the proceedings could not have proceeded. The High Court held that so far as the offences under Sections 467, 471 and 120-B I P C were concerned as they fell within the ambit of Section 195 (1) (b) (ii) of the Code no cognizance could be taken by the Magistrate without a complaint being filed. The relevant portion of Section 195 (1) (b) may be extracted thus;

195. (1) No court shall take cognizance -

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(b) (ii) of any offence described in Section 463 or punishable under Section 471 Section 475 or Section 476 of the said Code when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceedings in any court or

(iii) of any criminal conspiracy to commit or attempt to commit or the abetment of any offence specified in sub-clause (i) or sub-clause (ii)

except on the complaint in writing of that court or of some other court to which that court is subordinate.

4. On the facts mentioned above it is clear to us that in the complaint sent by the Registrar to the Inspector-General of Police offence mentioned were offences under Sections 262, 263, 467, 380 420 and 471 but for a perusal of the recitals in the original memorandum which formed the basis of the complaint it seems to us that the only offences which have been made out would be offences under Section 262, 263, 380 and 420 which are obviously not covered by Section 195 of the Code.

5. The High Court held that the offences under Section 467, 471 and 120-B I P C even if made out could not be taken cognizance of by the trial Court without a complaint under Section 195 of the Code. A perusal of the facts shows that there is not even a hint regarding forging any document or using a forged document. Taking the complaint at its face value at the most the cases against the accused would fall within the ambit of Sections 262, 263, 380 and 420 I P C which do not require a complaint under Section 195. The fact that some person aided and abetted the detaching of the used stamps form the old files and reusing them in the other cases does not involve any process of forgery or sue of a forged document.

6. In these circumstances therefore, it is not necessary for us to go into the broader question as to whether if offences under Section 467, 471 and 120-B I P C are committed the complaint could proceed or not. The law is now well settled that where an accused commits some offences which are separate and distinct from those contained in Section 195 Section 195 will affect only the offences mentioned therein unless such offences form an integral part so as to amount to offences committed as a part of the same transaction in which case the other offences also would fall within the ambit of Section 195 of the Code.

7. In the instant case as already pointed out by us on the facts narrated by the Registrar in his complaint no offence under Sections 467, 471 and 120-B I P C is at all revealed and as such it is not necessary to go into the question as to what offences are connected with Sections 467, 471 and 120-B and which are severable from them. The High Court was fully justified in quashing the proceeding against the accused as far as offences under Section 467, 471 and 120-B I P C were concerned not because they wee covered by Section 195 of the Code but because allegations contained in the complaint did not constitute these offences. The High Court was further fully justified in directing that other offence mentioned above did not require a complaint under Section 195 and would have to be tried.

8. In the view that we take it is not necessary for us to decide the broader question of law posed by the High Court i.e. whether or not offences under Section 467, 471 and 120-B I P C along with

other offences were covered by Section 195 of the Code.

9. We, therefore affirm the judgment of the High Court and dismiss the appeals and the special leave petition and direct that cases under Sections 262, 263, 380/34 and 420/34 Indian Penal Code be tried without any complaint under Section 195 of the Code.

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