

Balasubramaniam

v.

State By Si Police, T.N. and Another

(Supreme Court Of India)

HON'BLE JUSTICE N. SANTOSH HEGDE HON'BLE JUSTICE U.C.
BANERJEE

Criminal Appeal No. 904 of 1998 | 06-09-2001

The instant appeal involves a question as to whether the bar under Section 195(1)(b)(ii) of the Code of Criminal Procedure would apply as against a private complaint for an offence under Sections 467 and 471 of the Indian Penal Code even in respect of a document which was forged before it was filed in court. Apparently, divergent views have been expressed by this Court. In *Gopalakrishna Menon v. D. Raja Reddy* a two-Judge Bench came to a conclusion that even in respect of such a document which was forged before filing it in court, the bar under Section 195(1)(b)(ii) would apply. Subsequently, however, in the case of *Sachida Nand Singh v. State of Bihar* the decision in *Gopalakrishna Menon* case stands expressly overruled and this Court came to a definite conclusion other than the one that was stated in *Sachida Nand* case. For convenience sake, paras 11 and 12 of the judgment in *Sachida Nand* case are set out hereinbelow :

"11. The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in court or given in evidence in a proceeding in that court, In other words, the offence should have been committed during the time when the document was in custodia legis.

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2. It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the court and long before its production in the court, could also be treated as one affecting administration of justice merely because that document later reached the court records."

During the course of hearing before this Court, however, learned Senior Counsel appearing for the State of Tamil Nadu contended that after the decision in Sachida Nand case this Court had occasion to deal with a similar issue in M. S. Ahlawat v. State of Haryana and expressed a different view as has been laid down in Sachida Nand case.

Incidentally, it should be noticed here that the decision in Sachida Nand case was not placed before the Court for consideration and this Court in that case came to a conclusion as recorded in paras 5 and 6 which for convenience sake are also set out hereinbelow :

"5. The contention of the appellants is that if the offence alleged is with respect to a document which reached the Court then the aforesaid bar operates, no matter whether the offence was committed before or after its production in court. In other words, according to the appellants, the decisive event for attracting the bar is the production of the document in the Court.

6. A reading of the clause reveals two main postulates for operation of the bar mentioned there. First is, there must be allegation that an offence (it should be either an offence described in Section 463 or any other offence punishable under Sections 471, 475, 476 IPC) has been committed. Second is that such offence should have been committed in respect of a document produced or given in evidence in a proceeding in any court. There is no dispute before us that if forgery has been committed while the document was in the custody of a court, then prosecution can be launched only with a complaint made by that court. There is also no dispute that if forgery was committed with a document which has not been produced in a court then the prosecution would lie at the instance of any person. It so, will its production in a court make all the difference ?"

In view of the apparent inconsistency, we do feel that the matter requires to be placed for consideration before a larger Bench and hence the matter to be placed before the learned Chief Justice for appropriate orders.

