SUPREME COURT OF INDIA

Mahesh Chand Sharma

Vs.

State of U.P.

Crl.A.No.1640 of 2009

(V.S. Sirpurkar and Deepak Verma JJ.)

28.08.2009

JUDGMENT

Deepak Verma, J.

1. Leave granted.

2. This appeal arises out of Judgment and order dated 9.5.2008 passed by learned Single Judge of High Court of Judicature at Allahabad in Criminal Misc. Application No.26653 of 2007 wherein and whereby a petition filed by respondent Nos.2, 3 and 4, viz., Panna Lal, Ram Babu and Rajkumar respectively under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') has been allowed and the Criminal case No.1245/IX of 2007 titled State Vs. Panna Lal and Ors. registered against them under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code (for short, 'IPC') on the file of Additional Chief Judicial Magistrate-I, Mathura and the order dated 24.9.2007 whereby and whereunder the Presiding Officer of the Court took cognizance against the accused, respondent nos.2 to 4 herein, have been quashed. Appellant, feeling aggrieved by the said order of quashment is before us challenging the same on variety of grounds.

3. We have accordingly heard Mr. D.K. Goswami, learned counsel for the appellant and Mr. R. Dash, learned senior counsel for respondent No.1-State. Despite service of notices none appeared before us for the accused-respondent Nos.2 to 4.

4. Facts, shorn of unnecessary details, are mentioned hereinbelow:

5. The appellant filed a complaint purportedly under Section 156(3) of the Cr.P.C. on 13.10.2004 before the Chief Judicial Magistrate, Mathura. The main allegation in the said complaint is that he had purchased land admeasuring 0.38 decimal from Mahesh Chand, S/o Shri Jagan Prasad vide registered sale deed dated 6.10.1986. Pursuant to the execution of said sale deed in favour of the appellant-Mahesh Chand Sharma, he was handed over possession of the same by the vendor and since then he continues to be in possession thereof.

6. On 23.9.1996 appellant, with an intention to protect the property, started constructing boundary wall, which was objected to by Panna Lal, Ram Babu and Rajkumar, respondent Nos.2 to 4 herein. They contended that the land in question, alleged to have been purchased by the appellant is recorded in their names and they were ready to fight on this issue.

7. Thereafter, appellant Mahesh Chand Sharma and his vendor Mahesh Chand both went to Tehsildar's Court and made inquiries about case no.293/14 A.T and came to know that the said accused in collusion with Area Lekhpal, Prahlad Singh got their names mutated on the basis of report dated 18.8.1992 said to have been prepared under Section 22 of the Land Record Manual.

8. In the said report, Area Lekhpal reported that accused Panna Lal, Ram Babu and Rajkumar, sons of Parsadi are the only heirs of Jagan Prasad and Devi Prasad both sons of Bidha Ram. It was falsely stated that Jagan Prasad had no heir, while the vendor of the appellant Mahesh Chand is the only son of Late Jagan Prasad and is still alive and he is also the legal heir of his real uncle Devi Prasad who had no issues.

9. It appears that the Area Lekhpal had given totally untrue statement and by showing an alive person Mahesh Chand S/o Jagan Prasad, appellant's vendor as dead had got the said names of the accused mutated. According to appellant, they had thereby committed the offences punishable under Sections 420, 467, 468, 471 and 120B of the IPC.

10. On the strength of these allegations, an order under Section 156(3), Cr.P.C. was passed. The said application/complaint of the appellant was allowed and police registered the FIR and started investigation.

11. Even though learned Single Judge has given the details of the family tree of the respondents and Mahesh Chand, vendor of the appellant but to decide the said case, it is not necessary to dwell on it further.

> "Suffice it to say that Mahesh Chand is the only surviving lineage on his side of the family. Therefore, Mahesh Chand being the only person alive, inherited the entire property of Bidha Ram. Being the lawful owner of the above mentioned property, he executed the sale deed on 6.10.1986 as mentioned hereinabove in favour of appellant."

12. As would be revealed from the facts of the case, it was Area Lekhpal who, in furtherance of his evil intentions, gave a false statement with an object to help the accused asserting that the last descendant of Bidha Ram, i.e., Mahesh Chand, vendor of the appellant had already died. On the strength of this statement having been made by Area Lekhpal, the names of the respondent Nos.2 to 4 were mutated in their favour by the Court of Tehsildar on 9.10.1992.

13. Accused Respondent Nos.2 to 4 asserted that disputed property was mutated in their names on the basis of an unregistered Will dated 14.07.1974 said to have been executed by

late Jagan Prasad, father of Mahesh Chand, ignoring his only son, which is highly ridiculous and certainly an afterthought.

14. The appellant, on coming to know that names of accused have been mutated on the property of which he is the lawful owner, having purchased the same from its previous owner, Mahesh Chand, S/o Jagan Prasad, thereby moved an application before SDM, Mathura, to set aside the mutation order dated 9.10.1992, which application ultimately came to be allowed.

15. Feeling aggrieved by the said order passed in favour of the appellant, accused-respondents filed an appeal before the Commissioner of Agra Division, but it met the fate of dismissal. The matter thus came to an end as far as mutation proceedings were concerned.

16. Looking to the adamant and offensive attitude of the accused, the appellant was constrained to move a complaint under Section 156(3) of the CrPC before the learned Magistrate, Mathura who directed to investigate the matter and register a case against the accused- respondents. An FIR was registered as Crime No.51/2004. After investigation, the investigating officer submitted the final report on 15.12.2004. The appellant, feeling aggrieved by the said final report of the police, filed a Protest Petition in the Court of A.C.J.M., Mathura on 19.3.2005, who treated it to be a complaint and fixed the case for recording of the statement of the appellant.

17. Being aggrieved by the said order passed by ACJM, Mathura, the appellant filed Criminal Revision No.335/2005 before Additional Sessions Judge, Mathura, which came to be admitted for hearing on 15.6.2005. During the pendency of this Revision, the appellant's protest petition dated 19.3.2005 was dismissed in default by the learned Magistrate. On coming to know about the dismissal of the said protest petition, appellant filed another Criminal Revision No. 526/2005 before the Additional Sessions Judge, Mathura.

18. The Additional Sessions Judge allowed both the Revisions vide its judgment dated 31.10.2005 and set aside the orders of the learned Magistrate dated 7.6.2005 treating the protest petition to be a complaint as also the order of dismissal of the said petition.

19. Pursuant to the directions of the learned Addl. Sessions Judge, Mathura, the Magistrate once again heard the appellant and pursuant thereto, directions were issued to the police to further investigate the matter rejecting the final report of the police dated 15.12.2004. Thereafter, police completed the investigation and Investigating Officer submitted the charge sheet on 18.9.2007 in the Court of Magistrate, Mathura for commission of alleged offences under Sections 420, 467, 468, 471 and 120B of the IPC.

20. On the strength of the charge sheet, Criminal Case No.1245/IX of 2007 as mentioned hereinabove was registered against the respondents, which took cognizance against respondent Nos.2 to 4 vide order dated 24.9.2007.

21. The accused moved the High Court by filing a petition under Section 482, Cr.P.C. as mentioned hereinabove with a prayer for quashing the charge sheet and taking cognizance thereof. The said petition having been allowed, Mahesh Chand Sharma S/o Ganga Charan Sharma is before us in this appeal.

22. We have critically gone through the impugned order passed by learned Single Judge and find that there has been total non-application of law with regard to provision contained in Section 195 of Cr.P.C. The relevant portion of the order passed by the learned Single Judge is reproduced hereinbelow:

> "Thus, it is clear from the aforesaid Section that the complainant could move an application in this regard before the Court of Tehsildar and that Court after making necessary enquiry could pass an order for lodging a complaint against the accused persons and that complaint could be sent to the Court of Magistrate having jurisdiction to try the offence. The above procedure, which was the right and correct procedure in present case, was not followed but an application under Section 156 (3) Cr.P.C. was moved for police investigation, which was barred in view of the provisions of Section 195 Cr.P.C.
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> Thus, the entire proceedings taken on the basis of the orders passed on the application under section 156(3) Cr.P.C. and on the charge sheet submitted in compliance of the orders on that application are -without jurisdiction, and the learned Magistrate erred in law by taking cognizance on that charge sheet. Hence, the present application under section 482 Cr.P.C. deserves to be allowed and the proceedings of the case deserves to be quashed in view of the bar of Section 195 Cr. P.C. The complainant opposite party No.2 shall, however, be at liberty to move an application against the accused applicants under Section 340 Cr.P.C. before the concerned Court in accordance with the provisions of law.
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> The application under section 482 Cr.P.C. is, therefore, allowed and the charge sheet submitted in Criminal Case No.1245/IX of 2007 State Vs. Panna Lal and others and the order of the Magistrate dated 24.9.2007 taking cognizance thereon are set aside. However, it will be open to the complainant opposite party No. 2 to move an application before the concerned court for taking action against the accused persons in accordance with the provisions of section 340 Cr.P.C."

23. To appreciate the facts and apply the law correctly, it is necessary to go through the relevant provisions and thus we reproduce Section 195(1)(b)(ii):

> "195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence -
>
> (1) No Court shall take cognizance-
>
> (a) ... ...

(b) (i) ... ...

(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 proceeding in any court, or

(iii) ... ..."

24. While dealing with the provision contained in Section 195 of the Cr.P.C. this Court in a celebrated judgment reported in titled *Sachida Nand Singh Anr. v. State of Bihar Anr.*[1] has held as under :-

"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 of the 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. If so, will its production in a court make all the difference?

7. Even if the clause is capable of two interpretations we are inclined to choose the narrower interpretation for obvious reasons. Section 190 of the Code empowers any magistrate of the first class to take cognizance of any offence upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the magistrate, and the general right of a person to move the court with a complaint is to that extent curtailed. It is a well- recognized canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise (*Abdul Waheed Khan v. Bhawani*[2])

25. Similar issue again came up for consideration before the Constitution Bench of this Court in yet another judgment in *Iqbal Singh Marwah Anr. v. Meenakshi Marwah Anr.*[3] and held as under :

"7. On a plain reading clause (b)(ii) of sub-section (1) of Section 195 is capable of two interpretations. One possible interpretations is that when an offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 IPC is alleged to have been committed in respect of a document which is subsequently produced or given in evidence in a proceeding in any court, a complaint by the court

would be necessary. The other possible interpretation is that when a document has been produced or given in evidence in a proceeding in any court and thereafter an offence described as aforesaid is committed in respect thereof, a complaint by the court would be necessary. On this interpretation if the offence as described in the section is committed prior to production or giving in evidence of the document in court, no complaint by court would be necessary and a private complaint would be maintainable. The question which requires consideration is which of the two interpretations should be accepted having regard to the scheme of the Act and object sought to be achieved.

8.Dr. A.M. Singhvi, learned Senior Counsel for the appellants, submitted that the purpose of Section 195 is to bar private prosecution where the cause of justice is sought to be perverted leaving it to the court itself to uphold its dignity and prestige. If a very restricted interpretation is given to Section 195 (1)(b)(ii)CrPC, as held in *Sachida Nand Singh v. State of Bihar*[4] the protection afforded by the provision will be virtually reduced to a vanishing point, defeating the very object of the enactment. The provision, it is urged, does not completely bar the prosecution of a person who has committed an offence of the type described thereunder, but introduces a safeguard in the sense that he can be so prosecuted only on the complaint of the court where the document has been produced or given in evidence or of some other court to which that court is subordinate. Learned counsel has also submitted that being a penal provision, giving a restricted meaning as held in Sachida Nand Singh would not be proper as a person accused of having committed an offence would be deprived of the protection given to him by the legislature. He has also submitted that on the aforesaid view there is a possibility of conflicting findings being recorded by the civil or revenue court where the document has been produced or given in evidence and that recorded by the criminal court on the basis of private complaint and therefore an effort should be made to interpret the section in the manner which avoids such a possibility.

Finally while interpreting the provision of Section 195 of the Cr.P.C. the Bench held as under in para 10 of the said Judgment.

10. The scheme of the statutory provision may now be examined. Broadly, Section 195 Cr.P.C deals with three distinct categories of offences which have been described in clauses (a), (b)(i) and (b)(ii) and they relate to (1) contempt of lawful authority of public servants, (2) offences against public justice, and (3) offences relating to documents given in evidence. Clause (a) deals with offences punishable under Sections 172 to 188 IPC which occur in Chapter X IPC and the heading of the Chapter is -- Of Contempts of the Lawful Authority of Public Servants. These are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b)(i) refers to offences in Chapter XI IPC which is headed as -- Of False Evidence and Offences Against Public Justice. The offences mentioned in this clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a court of justice or before a public

servant who is bound or authorised by law to receive such declaration, and also to some other offences which have a direct correlation with the proceedings in a court of justice (Sections 205 and 211 IPC). This being the scheme of two provisions or clauses of Section 195 viz. that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 Cr.P.C. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any court.

26. The ratio decidendi of the aforesaid two cases lead us to a conclusion that the order passed by the learned Single Judge cannot be sustained in law.

27. Learned Single Judge proceeded on absolutely wrong facts and incorrect principles of law have been applied.

28. Learned Single Judge completely lost sight of the fact that the offence committed by accused in collusion with Area Lekhpal was not in relation to court proceedings. It was in any case behind the back of the appellant and as soon as he came to know with regard to the illegal designs of the accused he lodged a complaint under Section 156(3) of the Cr.P.C.

29. The law on the point is too well settled in the light of the above said two judgments of this Court that Section 195 (1)(b)(ii) of the Cr.P.C. contemplates a situation where offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any Court.

30. The learned Single Judge further committed a gross error in resorting to Section 340 of the Cr.P.C. as provisions of the said Section can be invoked only when it is established that offence of forgery had already been committed. In any case, accused had miserably failed for grant of any relief under Section 482 of the Cr.P.C. The limit of exercising jurisdiction conferred on the Court under Section 482 of the Cr.P.C is well defined and by no stretch of imagination, it could be said that petition filed by accused under Section 482 of the Cr.P.C had fulfilled the requirement as contemplated in this Section.

31. Looking to the facts from any angle, we are of the considered opinion that the impugned order cannot be sustained. The same is accordingly hereby set aside and quashed.

32. As a necessary consequence thereof, learned Magistrate is directed to proceed with the Criminal Complaint filed by appellant herein against the accused- respondent nos.2, 3 and 4 in accordance with law and on merits at an early date and endeavour would be made by him to dispose of the same within a period of six months from the date of appearance of the parties.

33. The appeal stands allowed.

[1]*(1998) 2 SCC 493*
[2]*AIR 1966 SC 1718*
[3]*(2005) 4 SCC 370*
[4]*(1998) 2 SCC 493*