

ALLAHABAD HIGH COURT

Har Prasad

Vs.

Hans Ram

Criminal Revn. No. 1732 of 1963, against judgment and order of Addl. Dist. and S.J.

Meerut

(H.C.P. Tripathi, J.)

17.08.1963. 10.12.1964

ORDER

H.C.P. Tripathi, J.

1. On the 3rd of April, 1961 applicant filed a complaint before a Magistrate First Class at Meerut on the allegations that he was the Bhumidhar of plots Nos. 836, 837 and 821 of village Shafiabad, that in pursuance of a conspiracy amongst themselves, the opposite parties with a view to cause loss to the applicant got a fictitious sale-deed in respect of the aforesaid plots executed and registered in favor of opposite party No. 1 on 9th January 1981 for alleged consideration of Rs. 2000/- and on the basis of that forged deed opposite party No. 2 moved an application for mutation of plots before the Tahsildar Hapur and thereby they had all committed offences under Sections 467 and 471 Indian Penal Code.

2. The learned Magistrate was of opinion that as the allegations made in the complaint indicated that the alleged offences were committed in relation to a proceeding before the court of the Tahsildar, the complaint was barred by Section 195 of the Code of Criminal Procedure. He, therefore, dismissed it without framing any charge against the accused. The applicant came up in revision against that order before the learned Sessions Judge but it was dismissed. Hence this revision.

3. Learned counsel for the applicant has raised several contentions in support of this revision. He has argued that a Tahsildar dealing with a mutation case is not a revenue

court within the meaning of Section 195 of the Code and that as the offence of forgery was complete when a fictitious sale-deed was executed and registered, the subsequent filing of an application by one of the opposite parties on its basis for mutation before the Tahsildar should not have influenced the courts below for holding that the complaint was barred under Section 195 of the Code. Learned counsel has further argued that in any case as opposite parties Nos. 2 and 3 were not parties to the mutation proceedings, the order of the courts below holding the complaint barred against them also under Section 195 Criminal Procedure Code is not sustainable. Reliance was placed by the learned counsel on a decision of the Privy Council in the case of *Nilman Singh v. Rudra Partap Narain Singh*, reported in ¹ I, however, find no force in these contentions.

4. In the case referred to by the learned counsel it was held by the Privy Council that mutation proceedings.

"are much more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid."

and that it was an error to suppose that such proceedings are "judicial proceedings in which the title to and the proprietary rights in immovable property are determined." These observations no doubt indicate that a Tahsildar dealing with mutation proceedings may not be a court, but that was not a question in issue before their Lordships and the observations were made only to emphasize the fact that mutation proceedings do not decide the rights of the parties finally. This case, in my opinion, is not an authority for the proposition that the Tahsildar is not a revenue court.

5. Revenue laws and the courts which administer them are mostly the creatures of the respective State Legislatures. Section 4, Sub-clause (8) of the United Provinces Land Revenue Act, 1901 reads :

"(8) "Revenue Court" means all or any of the following authorities (that is to say), the Board and all members thereof, Commissioner, Additional Commissioners. Collectors, Additional Collectors. Assistant Collectors, Settlement Officers, Assistant Settlement Officers, Record Officers and

Assistant Record Officers and Tahsildars";

6. Section 5 of the aforesaid Act provides that the control of all non-judicial matters converted with the land revenue is vested in the State Government and the control of all judicial Matters is vested in the Board. The orders passed by a Tahsildar in mutation proceedings can be agitated against before the Board. Section 234 of the Act gives power to the State Government and the Board to make rules prescribing the duties of a Tahsildar. defining classes of cases, matters, businesses, orders or proceedings which are to be deemed judicial or non-judicial respectively. In exercise of this power the State Government has issued a notification defining the mutation proceedings as judicial. In view of these provisions in the Land Revenue Act and also because the Tahsildar dealing with a mutation proceeding decides a us by a definitive judgment on the basis of evidence recorded in accordance with the Evidence Act there can be no doubt that he is a link in the hierarchy of revenue courts as envisaged under Section 195 of the Code of Criminal Procedure. In the instant case it is no doubt true that the application for mutation was dismissed without recording any evidence, on the application of the opposite party but that will not change the nature of the proceedings.

7. In the case of *Badri v. State*,² it was observed :

"It is because the court may not be in possession of all the facts on the basis of which it can decide whether to make a complaint or not that there is a provision in Section 476 of the Code for an application being made to it and for its making an enquiry into the offence alleged to have been committed in relation to the proceeding held by it. If the court has not obtained possession of the necessary facts in the proceedings itself it is open to the applicant to bring those facts to its notice and invite it to make a complaint."

Therefore, if on account of the application filed by the opposite party the mutation case was dismissed summarily and the court of the Tahsildar "has not obtained possession of the necessary facts in the proceeding itself" it was open to the applicant to bring those facts to its notice and to invite it to make a complaint by filing an application under Section 476 of the Code.

8. The contention raised by the learned counsel that the offence of forgery was

complete before the document was filed in court and, therefore, the bar of Section 195(1)(b) was not available is also covered by the Division Bench decision of this Court referred to above in which it was observed :

"Section 195(1)(b) simply requires that there should be some relationship between the offence alleged to have been committed and the proceeding; no particular kind of relationship is required. The words "in relation to" do not mean that the offence must have been committed after the proceeding had started. Even if the offence was committed prior to the proceeding it can be said to be in relation to the proceeding if the proceeding was undertaken in consequence of it."

9. In the present case, the allegations made in the complaint are that the forged sale-deed was got executed and registered in pursuance of a criminal conspiracy between the opposite parties on 9-1-1961 and on the same date one of them filed an application for the mutation of the plots on the basis of the aforesaid forged document before the Tahsildar. There can be no doubt, therefore, that on the allegations made in the complaint a close nexus is established between the conspiracy amongst the three opposite parties, its resulting in a forged sale-deed and the subsequent filing of the mutation application on its basis, all of which form various links of the same chain. It must, therefore, be held that the alleged fictitious sale-deed was fabricated as false evidence for the purpose of being used in a judicial proceeding and the offence being committed in relation to any proceeding in any court, its cognizance was barred on a private complaint under Section 195(1)(b) of the Code.

10. Even if it is held that the allegations made in the complaint disclose offences under Sections 467 and 471 Indian Penal Code as alleged therein and not under Section 193 Indian Penal Code, their cognizance on a private complaint will be barred if not under Section 195(1)(b) of the Code, as has been held by the courts below, then under Sub-Section (c) of the same section. Section 195(1)(c) reads :

"(1) No Court shall take cognizance –
(c) 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."

11. It will be noticed that the words used in this Sub-section are "in respect of a document produced or given in evidence in such proceeding" which indicate that the intention of the legislature was not to circumscribe the offences described in it only when they are committed when the proceedings are pending in court but also to include them within the ambit of the section, even if they had been committed anterior to it and the fruit of that offence has been relied upon in those proceedings. In other words, the words "in respect of" are wide enough to include even a document which was prepared before the proceedings started in a court of law but was produced or given in evidence in that proceeding. In this view of the matter, I am of opinion that although the document in question was fabricated before the proceedings started in court and although two of the opposite parties were not impleaded in the mutation proceeding before the Tahsildar, it must be held that the cognizance of the offence was barred by Section 195(1)(c) of the Code.

12. The salutary provision of Section 195 Criminal Procedure Code has been engrafted with a view to avoid multiplicity of proceedings. When a document is produced in a court or is given in evidence, it is for that court to decide whether it is genuine or forged. If a private party is allowed to judge a complaint on the basis of that document describing it as a forged document and if that complaint is entertained without affording an opportunity to the court before whom the document had been produced to give its opinion, it will amount to forestalling its decision and is likely to lead to anomalous situation and also sometimes to contradictory findings by two competent courts.

13. I am satisfied that the finding arrived at by the courts below are correct, and this revision has no force. It is, therefore dismissed.

Revision dismissed.

Cases Referred.

1. AIR 1926 PC 100
2. 3963 All LJ 334: (1963 (2) Cri LJ 64)

