

ALLAHABAD HIGH COURT

Vivekanand Nand Kishore

Vs.

State (Allahabad)

Criminal Revn. No. 1092 of 1965. against order of S. J. Allahabad,
(J.N. Takru, J.)

03.03.1965. 26.08.1967

ORDER

J.N. Takru, J.

1. Vivekanand has filed this revision against the revisional judgment and order of the learned Civil and Sessions Judge, Allahabad, rejecting his application praying for the dropping of the proceedings initiated against him under Sections 406, 420, 467 and 471, Indian Penal Code.

2. The facts giving rise to this revision lie within a narrow compass. It appears that the applicant presented an application before the Compensation Officer, Meja on the 19th, November, 1958 praying for the withdrawal of a sum of Rs. 80-98 P. which was payable as compensation to one Bans Bahadur. The application was accompanied by a Vakalatnama purporting to be signed by Bans Bahadur. The case for the prosecution is that the said Vakalatnama was forged by the applicant as Bans Bahadur had died some time before, and that after withdrawing Rs 80.98 P. on the strength of it, he misappropriated the said sum. When the matter came to the knowledge of the A. D. M. (E), Allahabad he made a report to the Police and the latter after enquiry submitted a charge-sheet against the applicant under sections 406, 420, 467 and 471 Indian Penal Code.

3. When the case came up for hearing in the trial Court the applicant took a preliminary objection that as the present prosecution was in respect of offences relating to a document given in evidence the learned Magistrate could take cognizance

of them only on the complaint in writing of the court before which the said document was produced, or some court to which such court was subordinate, and as no such a complaint had been made he could not take cognizance of those offences under Section 195(1)(c) Criminal Procedure Code. Both the Courts below rejected this objection thus giving rise to the present revision.

4. On behalf of the applicant his learned counsel urged two contentions in support of this revision. His first contention was that as the offence under section 471 Indian Penal Code was allegedly committed by the applicant as a party to the proceeding initiated by him in the court of the Compensation Officer, Meja and as it was in respect of a document produced by him in that court, Section 195 (1)(c) of the Criminal Procedure Code barred the Magistrate from taking cognizance of that offence except on the complaint in writing of the said court or of some other court to which such Court was subordinate. His second contention was that as all the other offences for which the applicant was also charged, namely, sections 406, 420, and 467 Indian Penal Code were all cognate to the offence under Section 471 Indian Penal Code and, in fact and substance stemmed from it the Magistrate could not take cognizance of those offences as well under Section 195 (1)(c) Criminal Procedure Code. After hearing the learned counsel for the parties I am satisfied that both these contentions are well founded. I shall, therefore, proceed to give my reasons of coming to that conclusion after quoting the material parts of Section 195(1) Criminal Procedure Code. Thus quoted Section 195 (1) reads as follows:

"195(1) No Court shall take cognizance

(a)

(b).....

(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."

5. A plain reading of this sub-section shows that two conditions are necessary for its applicability, (1) that the offence mentioned therein should be committed by a party to any proceeding in any court, and (2) that such offence should be in respect of a

document produced or given in evidence in such proceeding. So far as the question whether the Compensation Officer is a court or not, the learned Civil and Sessions Judge has held and, in my opinion rightly, that it is a court. It was not disputed, as indeed it could not be disputed, that the document in question, viz. the alleged forged vakalatnama was produced in the court of the Compensation Officer. Hence the only point which remains for determination is whether the said vakalatnama was produced by a party to any proceeding in that court. It will be noticed that the expression "by a party to any proceeding in any court" is not preceded or followed by any words of limitation which might go to show that when the forged document is produced or given in evidence in a court, some proceeding to which the person producing or giving the said document in evidence is a party, should have been pending. Hence if a person initiates a proceeding in a court and in connection with it produces or gives in evidence a forged document, his case would also be covered by the expression "by a party to any proceeding in a court." In the present case it is common ground that there was no proceeding pending in the court of the Compensation Officer when the application in question was made there by the applicant on the 19th November 1958. But as soon as he moved that application a proceeding to which he was a party came into existence and as in that proceeding an allegedly forged vakalatnama was produced, both the ingredients of Section 195(1)(c) Criminal Procedure Code must be held to have been made out.

6. On behalf of the State it was, however, contended that as the offence of forgery as described in section 463 Indian Penal Code was committed prior to the applicant becoming a party to the aforesaid proceeding in the Court of the Compensation Officer, section 195(1)(c) had no application to this case. I do not agree, for the simple reason that there is nothing in this section to warrant such an interpretation. All that that section lays down is that if a forged document is produced or given in evidence by a party to any proceeding in any court the bar laid down in that section is attracted and for that purpose it is immaterial whether the forgery was committed prior or subsequent to the initiation of the said proceeding. Thus on the plain terms of the section I am satisfied that the first contention of the applicant's learned counsel is correct.

7. As stated earlier the second contention of the applicant's learned counsel is also well founded. It is unnecessary, however, to enter into a detailed discussion of it as it is, in my judgment, concluded by the Division Bench decision of this Court in *Hari*

Nath Singh v. State,¹ It was held in this case that:

"Even for offences cognizance of which was not per se barred under section 195, Criminal Procedure Code no Magistrate could be allowed to take their cognizance if it was not a 'distinct' offence or if in truth and substance the offence fell under the category of sections mentioned in section 195, Criminal Procedure Code

8. The aforesaid view was founded upon the following observations of their Lordships of the Supreme Court in the case of *Basirul Haq v. State of West Bengal*,²

"Though, in our judgment, section 195, does not bar the trial of an accused person for a 'distinct' offence disclosed by the same facts and which is not included within the ambit of that section, it has also to be borne in mind that the provisions of that section cannot be evaded by resorting to device or camouflages. The test whether there is evasion of the section or not 'is whether the facts disclosed primarily and essentially an offence for which a complaint of the Court or of the public servant is required'. In other words, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, upon the ground that such latter offence is a minor offence of the same character, or by describing the offence as being one punishable under some other section of the Indian Penal Code, though in truth and substance the offence falls in the category of sections mentioned in the Section 195, Criminal Procedure Code merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of Section 195 prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it." (the underlining is mine (here in (' '))

9. Applying the aforesaid test to the present case, we find that the main offence is the one under section 471 Indian Penal Code namely, the offence of using a forged document as a genuine document. The other offences all flow from it, in the sense that if the charge under Section 471 Indian Penal Code fails the charges for the other offences would also fail. In addition, none of those offences can 'in truth and substance' be said to be of a distinct nature. I am therefore, satisfied, that the mere fact that sections 406, 467, and 420 Indian Penal Code are also tacked on to the offence under Section 471 Indian Penal Code would not serve to take the case out of the scope

and ambit of Section 195(1)(c). Criminal Procedure Code.

10. Thus for the reasons stated above the preliminary objection of the applicant was wrongly rejected by the courts below. I accordingly set aside their judgments and allow the revision and order the present proceeding to be dropped.

Revision allowed.

Cases Referred.

1. 1964 All LJ 467
2. AIR 1953 SC 293
- 3.