

JAMMU AND KASHMIR HIGH COURT

Habib Shah

Vs.

Mehda Shah

Criminal Revn. No. 11 of 1959

(J.N. Wazir, C.J.)

25.08.1959

JUDGMENT

J.N. Wazir, C.J.

1. In a complaint filed by Mehda Shah against Mst. Khatoni and others under Section 82 of the Registration Act objection was taken by the counsel for the accused that the complaint was not maintainable without the previous sanction of the Registering Authority as contemplated by Section 83 of the Registration Act. The learned Munsiff Magistrate Handwara over-ruled this objection of the accused. Against the order of the Munsiff Magistrate a revision application was filed by the accused in the Court of the Additional Sessions Judge who affirmed the order of the Munsiff Magistrate and dismissed the revision application. The accused has come up in revision to this Court against the order of the Additional Sessions Judge.

2. The sole question for consideration in this revision application is whether it was necessary for the complainant to obtain permission under Section 83 of the Registration Act before filing the complaint against the accused under Section 82 of the said Act.

3. The learned counsel for the petitioner has relied upon a decision of the Rangoon High Court, and also on the Full Bench decision of the Allahabad High Court, reported as *Mohammed Mehdi v. Emperor*¹,

4. It is true that in the Rangoon case the view taken was that a private person cannot commence a prosecution for an offence under the Act without the permission mentioned in Section 83 of the Registration Act and the same view was taken by the Full Bench of the Allahabad High Court; but the High Courts of Calcutta, Madras and Bombay have held that the provisions of Section 82 are not obligatory. The Full Bench of the Calcutta High Court in *Gopinath v. Kuldip Singh*², has held as follows :

"We are of opinion that no sanction is required. It has been contended that, under Section 83 of the Registration Act, it is necessary that some one of the

¹ AIR 1934 All 963

² ILR 11 Cal. 566

officers who are mentioned in that section must have given previous permission to institute proceedings; but we think that it is not so. The provisions of Section 83 are not obligatory. They rather seem to be intended for the purpose of enabling the officers of the Registration Department when they should see fit, to institute any prosecution under the Act upon their own responsibility."

5. The same view was taken by the Madras High Court in *In re, Piramu Nadathi*, AIR 1918 Madras 439. It has been held that the permission of the officers specified in Section 83, Registration Act, is not a preliminary requisite for the institution of proceedings by a private person for offences under the Act. The Patna High Court also took the same view in *Ganga Ditya v. Emperor*³, in which it has been held that permission under Section 83 is not necessary for the institution of a prosecution by a private person for an offence under Section 82.

6. The language of Section 83 of the Registration Act does not totally prohibit prosecution in respect of offences under the Registration Act without obtaining sanction of the registering authorities. Section 83 lays down that a prosecution for any offence under this Act coming to the knowledge of a registering officer, in his official capacity may be commenced by or with the permission of the Inspector-General, the Registrar or the Sub-Registrar, in whose territories, district or Sub-district, as the case may be, the offence has been committed. Whereas in Section 195 of the Cr. P. Code the phraseology adopted is that no Court shall take cognizance of certain offences without obtaining a certain sanction. By comparison of the provisions in these two sections it would be perfectly clear that the provisions of Section 83 do not prohibit a private individual from filing a complaint without obtaining sanction of the Registering Authority whereas under Section 195 Cr. P. Code the prosecution cannot be commenced without obtaining the sanction of certain authorities. In my view the learned Addl. Sessions Judge has rightly held that it was not necessary to obtain previous sanction under Section 83 of the Registration Act before filing a complaint under Section 82 of the Registration Act against the accused.

7. I see no force in this revision application and it is dismissed.

Revision dismissed.

³ AIR 1943 Pat 227