

(1991) 09 AP CK 0010

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 273 of 1991

Alluri Surya Prasad and Others

APPELLANT

Vs

Kalidindi Venkataraju and Another

RESPONDENT

Date of Decision : 12-09-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195(1), 482
Penal Code, 1860 (IPC) — Section 463, 466, 467, 477

Citation : (1991) 3 ALT 595 : (1992) 1 APLJ 85

Hon'ble Judges : G. Radhakrishna Rao, J

Bench : Single Bench

Advocate : B. Adinarayana Rao, for the Appellant; S. Venkata Reddy and The Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

G. Radhakrishna Rao, J.—Consequent upon an observation made by the Subordinate Judge, Kovvur, while disposing of Interlocutory Applications in O.S. 92/88 filed by the petitioners herein, the defendant (first respondent herein) filed a private complaint against the petitioners before the II Additional Judicial 1st Class Magistrate, Kovvur, alleging that the suit agreement was forged by the petitioners and thus committed an offence under Sections 465, 466, 468 and 474 IPC. The said complaint was taken on file by the learned Magistrate.

2. Sri B. Adinarayana Rao, the learned counsel for the petitioners vehemently contends that Section 195(1)(b)(ii) Cr.P.C. is a bar for initiation of proceedings under Sections 466 and 467 IPC. and the observations are made in an Interlocutory Application only, and hence cognizance of offence under Sections 466 and 467 IPC is vitiated.

3. When the suit agreement alleged to have been forged either prior to the filing of the suit or during the pendency of the suit and filed into the Court and given in evidence, the Civil Court is competent to decide the point with regard to the nature of the said document only at the time of the disposal of the suit. So long

as the main suit is pending, an observation made by the Civil Court, while disposal of an Interlocutory Application with regard to the nature of the suit agreement will not create any right to the defendant to file a complaint against the plaintiff.

4. Section 195(1)(b)(ii) Cr.P.C. reads as follows:

"195(1) No Court shall take cognizance(a)

(a) XX XX (b)(i) XX XX (ii) of any offence described in Section 463 or punishable u/s 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 by given in evidence in a proceeding in any court, or

(iii) XX XX except on the complaint in writing of that court, or of some other court to which that court is subordinate".

5. A reading of the above provision clearly shows that the learned Magistrate erred in taking cognizance of the case in spite of the specific prohibition contained therein. When an offence u/s 466 and 467 IPC. is alleged, the essential ingredients of Section 463 IPC. have to be established and hence Section 195(1)(b)(ii) Cr.P.C. is a bar for initiation of proceedings. Since the Civil Court is competent to take note of the fact whether to initiate the proceedings or not at the time of the final disposal of the suit, it has to be found that any finding that has been given in an interlocutory application is only for a limited purpose, but it cannot be construed under any circumstances as a final opinion expressed by the Court. Therefore, the pendency of a suit is a bar for initiation of proceedings for offences under Sections 466 and 471 IPC. Hence the proceedings before the learned Magistrate in C.C. 447/90 are quashed and the CrI. Petition is allowed.