(1995) 08 AP CK 0042

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2072 of 1995

Andhra Bank and Another APPELLANT

Vs

Station House Officer, Pattabhipuram Crime Police Station, Guntur and Others RESPONDENT

Date of Decision : 08-08-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195, 195(1), 463, 465, 468
Penal Code, 1860 (IPC) — Section 167, 205, 420, 465, 466

Citation : (1998) 2 ALT 587 : (1995) 2 ALT(Cri) 587 : (1995) 2 APLJ 466 : (1996) CriLJ 277

Hon'ble Judges : S.V. Maruthi, J

Bench : Single Bench

Advocate : C. Praveen Kumar, for the Appellant; T. Bali Reddy, for the Respondent

Judgement

1. The question involved in this writ petition is the applicability of S. 195(b)(ii) of the Criminal Procedure Code to an offence alleged to have been committed in respect of a document prior to the institution of the suit O.S. No. 240 of 1994. S. 195(1)(b)(ii) reads as follows :

"No Court shall take cognizance of any offence described in S. 463, or punishable under S. 471, S. 475 or 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."

The said section was amended in 1973. Prior to the amendment in 1973, the section reads as follows :

"Section 195(1)(c) : of any offence described in S. 463 or punishable under S. 471, S. 475 or S. 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.

2. From a reading of section before the amendment after the amendment, it appears that the word "by a party to any proceeding in any Court" have been deleted after he amendment. The Supreme Court considering the scope of S. 195(1)(c) before the amendment in Legal Remembrancer of Legal Remembrancer of Govt. of West Bengal Vs. Haridas Mundra, held as follows :

"The offence under S. 471 which was charged against the respondent was that he had used the two forged bills of Indian Machine Tools Co. as genuine on 24th and 29th June, 1955 by making on the strength of these two bills, false entries in the books of account of Richardson & Cruddas Ltd. crediting the aggregate sum of Rs. 10,60,900/- in the account of S.B. Industrial Development Co. (Pvt.) Ltd. and debiting it in the machinery acccount. This offence was alleged to have been committed by the respondent on 24th and 29th June, 1955 long before the proceeding in Matter No. 357 of 1957 commenced and he became a party to that proceeding and it was not committed by him in his capacity as such party, that is, after having become a party to the proceeding ..... This Court pointed out that the words of S. 195(1)(c) clearly meant that the offence should be alleged to have been committed by the party to the proceeding in his character as such, party, that is, after having become a party to the proceeding. Ss. 195(1)(c), 476 and 476A read together indicated beyond doubt that the legislature could not have intended to extend the prohibition contained in S. 195(1)(c) to the offence mentioned therein when committed by a party to a proceeding prior to his becoming such party. The scope and ambit of S. 195(1)(c) thus restricted by this Court to cases where the offence was alleged to have been committed by a party to a proceeding after he became such party and not before ..... It must inevitably follow, on this view, that since the offence charged against the respondent was one alleged to have been committed by him before he became a party to the proceeding in Matter No. 357 of 1957. S. 195(1)(c) had no application."

3. In other words, according to Supreme Court, S. 195(1)(c) is not applicable if the offence alleged to have been committed is prior to the initiation of proceeding in a Court of law, and section is applicable only to an offence alleged to have been committed during the course of the proceedings initiated. There is no decision of the Supreme Court under S. 195(b)(ii) after the amendment. However, the Punjab and Haryana High Court in Harbans Singh and Others Vs. State of Punjab, relying on the Supreme Court Judgment in Legal Rememberancer''s Case (supra) held that S. 195(b)(ii) after the amendment applies only to cases where the offence is alleged to have been committed during the course of the proceedings and not before the initiation of the proceedings. The relevant observations are as follows :

"The purpose of the amendment to delete the words "by a party to any proceedings in any Court" was to extend the benefit to the scribe, witnesses etc., who were intimately connected with the document, about which the suspicion of an offence having been committed is voiced by any party or is found to exist. It cannot be taken to mean that the legislature wanted to negate the ratio of the law laid down by the Supreme Court through its decision, which unreservedely was expressed in favour of the narrow view."

4. The learned Judges also referred to paragraph 15.93 Report of Law Commission and observed "the report of the Law Commission which form part of the objects and reasons for amendment of S. 195 of the old Code and the deletion of the words "by a party to any proceedings in Court" therefrom does not go in favour of taking a wider view of S. 195(1)(b)(ii) of the new Code as canvassed before us. The purpose of the legislature for bringing this marginal change has been rightly interpreted in Karnail Singh and Another Vs. The State of Punjab, to favour the narrow or restricted view which is more in consonance with the interest of justice. The Karnatka High Court in T. Govindaraju Vs. State of Karnataka, followed the view expressed by the Punjab and Haryana High Court and also the Judgment of the Supreme Court in a Legal Remembrancer of Legal Remembrancer of Govt. of West Bengal Vs. Haridas Mundra, . It was held as follows :

"A plain reading of S. 195 would show that for offences mentioned in Clause (b)(ii) and (iii) of S. 195(1) of the Code the Court can take cognizance of those offences only when the complaint is in writing filed by the Court or some other Court to which that Court is subordinate, before which the document in question is found to be forged one and the accused before that Court are found to have committed any offence. If the Section is strictly construed the bar would operate only if the offence is alleged to have been committed in respect of document which is produced or given in evidence and not to the offence committed earlier to the proceedings in Court. Thus, where the cognizance of offence of forgery was taken and the said offences were committed before the forged document was produced in pending suit before civil Court, the bar of S. 195(1)(b) would not be attracted and, therefore, complaint in writing of Civil Court for taking cognizance of offence was not necessary."

5. In other words, the Punjab and Haryana High Court relying on the judgment of the Supreme Court in Legal Remembrancer of Legal Remembrancer of Govt. of West Bengal Vs. Haridas Mundra, though that judgment was prior to the amendment of S. 195 was held that the procedure contemplated under S. 195(ii)(b) need not be followed in cases where the offence alleged to have been committed is prior to the initiation of the proceedings in a Court. Now, I refer to two judgments of this Court, wherein a contrary view was expressed. In Kodati Ramana alias Venkata Rama Ram v. The Station House Officer, (1991) 2 APLJ 379, a learned single Judge held that "after the amendment of S. 195 of the 1898 Code by 1973 Code, the relevant provisions of which have been already extracted hereinabove the words "by a party to any proceeding in any Court" are omitted. Therefore, the judgment of the Supreme Court in Mohan Lal''s case is no more applicable to the case on hand after the amendment of the provisions by 1975 Code." It is true that there is no discussion by the learned single Judge

on the interpretation of S. 195(ii)(b). However, while holding as above observed that after the amendment of S. 195 of Criminal Procedure Code whether the offence alleged to have been committed is during the proceedings before the Court or before the initiation of the proceedings in a Court, the procedure contemplated under S. 195 is to be followed. The next decision is the judgment of the learned single Judge in Inuganti Venkata Ramana Murthy v. Tentu Sanyasi Naidu, (1993) 2 CCR 1417 held that "here in this case, the first petitioner has filed two civil suits on the basis of agreement of sale while those suits are pending, the first respondent has filed a complaint, the maintainability of which is challenged in these proceedings. Forgery is described in S. 463, Cr.P.C. Ss. 465 - 469 provided for punishment of forgery of various documents and under various circumstances. Hence, under the circumstances and in view of the decisions referred to above, I am of the opinion that offence under S. 468, I.P.C. is one described under S. 463 and as such it is attracted by the provisions of S. 195, Cr.P.C. and that therefore the complaint is not maintainable." It is no doubt true, in this case, the question that arose for consideration is whether the provisions of S. 195 are applicable to a proceeding under S. 468, I.P.C. In that context, the learned Judge held that the S. 195 applies to a proceeding under S. 468, I.P.C. From the above, it is clear that the High Court took a view that irrespective of the fact that whether the offence alleged to have been committed is before or after initiation of the proceedings in a Court of law the procedure contemplated under S. 195 is applicable, whereas the other High Courts i.e. Punjab and Haryana, Kerala and Karnataka are of the view that S. 195(ii)(b) need not be followed where the offence is committed before the initiation of the proceedings.

6. I have already extracted S. 195(1)(b)(ii) in the earlier paragraph. It says that "no Court shall take cognizance of any offence described in S. 463, or punishable under S. 471, S. 475 or 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 ....".

The language used is when such offence is alleged to have been committed "in respect of a document produced," thereby meaning offence already committed in respect of a document which is produced in any Court. Therefore, the language used in S. 195(1)(b)(ii) makes it abundantly clear that it covers an offence alleged to have been committed in respect of a document produced in any Court even prior to the initiation of the proceedings in a Court.

7. Therefore, I am of the view that S. 195(b)(ii) applies to the offences alleged to have been committed even prior to the initiation of the proceedings in a Court. If the interpretation placed by the Punjab and Haryana and Kerala High Court is to be accepted it would amount to introducing words in the section i.e., alleged to have been committed in respect of a document produced any in Court while the document is in the custody of the Court which is not within the realm of the judicial interpretation. Therefore, with great respect the view expressed by the

Punjab and Haryana, Kerala, Karnataka High Courts is not acceptable.

8. Now coming to the facts of the present case, the petitioner is the Andhra Bank and Chief Manager of the Andhra Bank. The third respondent, namely, Rayapati Veeraiah executed a mortgage in favour of the petitioner and obtained loan. The loan was taken in the year 1983 by mortgaging the documents of title deeds. He discharged the loan on 13-4-1993. Thereafter he requested the bank to return the documents of title deposited with them for the purpose of obtaining loan. There was no response from the bank. He was also a co-obligant/guarantor to a loan advanced by the petitioner-bank to M/s. Balaji Ginning Mills. Since the petitioner did not return the documents, the third respondent approached the District Cosumer Forum, Guntur by filing C.D. No. 137 of 1994 on 7-1-1994. Thereafter he received a legal notice on 18-7-1994 from the petitioner bank stating that he executed R.F. 255 forms. The third respondent filed I.A. No. 78 of 1994 in C.D. No. 137 of 1994 for appointment of Commissioner to inspect the files maintained by the bank and to file copies of documents into the Forum. The Commissioner, accordingly, executed the warrant and filed documents in the Forum. The petitioners thereafter filed G.S. No. 240 of 1994 in the Sub-Court, Guntur on 30th September, 1994 for recovery of the amount from M/s. Balaji Ginning Mills since M/s. Balaji Ginning Mills did not repay the loan taken by them. Thereafter the third respondent filed a private complaint before the Munsif Magistrate on 8th October, 1994. Complaining that the petitioner committed offences under Ss. 167, 205, 420, 465, 466, 467, 468, 471, 474, 477-A, I.P.C. Challenging the registration of Crime No. 383 of 1994, the petitioners filed the present writ petition on the ground that the suit was filed on the basis of the documents executed by M/s. Balaji Ginning Mills and the 3rd respondent is a co-obligant and executed security by depositing title deeds and since the offence alleged to have been committed by producing a document in the Court, the procedure contemplated under S. 195(b)(ii) should be followed in the absence of which the Munsif Magistrate has no jurisdiction to proceed with the investigation and therefore investigation should not be allowed to proceed. The case of the third respondent is that he was only a co-obligant and he never executed any security by depositing title deeds in favour of the petitioner and that the petitioners have manipulated the documents and forged R.F. forms using his signatures obtained by them on blank papers and since the offence was alleged to have been committed is prior to the filing of the suit, the procedure contemplated under S. 195(b)(ii) need not be followed.

9. In this context, a reference to the complaint filed by the respondent No. 3 is necessary. It reads as follows :

"Then only i.e., on 18-7-1994 when the accused got issued legal notice to the complainant on 29-7-1994 when the Commissioner signed on the documents, on 5-8-1994 and 2-9-1994 when the accused filed counter, affidavit and plaint copy in C.D. 137/1994 the complainant came to know that the 2nd accused fraudulently and malafidely tampered and forged with R.F. 255 form, said to have been executed on 28-9-1983, 25-1-1984 and 22-3-1984. The said documents are in the custody of the accused. Thus the second accused maliciously, fraudulently, intentionally forged and tampered the valuable documents knowing very well that the complainant never extended the property covered under the documents namely the above title deeds as security for M/s. Balaji Ginning Mill, has not only committed forgery by tampering and fabricating the valuable documents but also cheated the complainant knowing fully well that they are forged by himself at his instance and advice and intending to cause wrongful loss and injury to the complainant. The second accused who is the custodian of the above documents faudulently tampered them and filed counter in C.D. 137/94. The first accused officers in usual course of practice had obtained the signature of the complainant on printed blank R.F. 255 forms in the year 1977, 1978 and 1982 when the complainant obtained loans for his business."

10. From the above complaint, it is clear that respondent No. 3 alleged that the petitioners have committed forgery and filed a suit on the basis of forged document. The cause of action for the complaint is filing of the documents alleged to have been forged by the petitioners in the Court. In the absence of the filing of the documents in the Court, there is no cause of action for the third respondent and also in view of the language used in S. 195(ii)(b), it is necessary that the procedure contemplated under S. 195(ii)(b) should be followed. Since the third respondent filed it as a private complaint and since the procedure contemplated under S. 195 is not followed, the registration of Crime No. 383 of 1994 is without any authority of law and without any jurisdiction. Therefore, the respondents are directed not to proceed with the investigation of the crime registered as Crime No. 383 of 1994. I have already referred to the allegations made in the complaint. The Sections under which the complaint is filed in 167, 205, 420, 465, 466, 467, 468, 471, 474 and 477-A of I.P.C. There cannot be any dispute about Ss. 205 - 471, as the sections are covered by S. 195(b)(ii). The only difficulty is with reference to Ss. 167, 474 and 477-A of I.P.C. S. 167 of I.P.C. says a public servant framing an incorrect document with intent to cause injury. It is not clear how this section is relevant in the context of the case. The allegation of the third respondent is that the petitioners have forged certain documents and filed suit on the basis of forged documents for the recovery of the amount covered by the documents and in my view S. 167, I.P.C. is not relevant in the context of the case. As regards Ss. 474 and 477-A of I.P.C., S. 474 provides for an offence in cases whoever has in the possession any document, knowing the same to be forged, and intending that the same shall fraudulantly or dishonestly be used as genuine is liable to be punished with imprisonment and fine. S. 477A deals with falsification of accounts. Since the allegation made by the third respondent is that the petitioner forged all the documents, Ss. 474 and 477-A of I.P.C. are integral parts of the offence covered by S. 195(ii)(b). In this context reference to the judgment of the Supreme Court in State of U.P. Vs. Suresh Chandra Srivastava and Others, is relevant. It was held that "where an accused commits some offences which are separate and

distinct from those contained in S. 195, S. 195 will affect only the offences mentioned therein unless such offences form an integral part so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of S. 195 of the Code." The offence covered by S. 474 and 477-A, I.P.C. are integral parts of the offences covered by S. 195 and form part of the same transaction therefore they cannot be proceeded with unless the procedure contemplated under S. 195(b)(ii) is complied with.

11. In view of the above, the respondents are directed not to proceed with the investigation of Crime No. 383 of 1994 in respect of all the offences mentioned therein.

12. The writ petition is accordingly allowed. There will be no order as to costs.

13. Petition allowed.