
(2010) 05 AHC CK 0030

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 2521 of 2010

Ganga Ram Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 190
Penal Code, 1860 (IPC) — Section 195(1), 463, 471, 475, 476

Citation : (2011) 2 ACR 1776

Hon'ble Judges : Kant Tripathi, J

Bench : Single Bench

Advocate : Amit Tripathi, for the Appellant; G.A., for the Respondent

Final Decision : Allowed

Judgement

Shri Kant Tripathi, J.—Heard Learned Counsel for the applicant and the Learned Counsel for the Respondent No. 3 and the Learned A.G.A. and perused the record.

2. It appears that the applicant moved an application u/s 156(3) of the Code of Criminal Procedure (in short "the Code") before the II-Judicial Magistrate, Faizabad vide Misc. Case No. 367 of 2009, Ganga Ram Pandey v. Vijay Kumar Shukla. The Learned Magistrate rejected the application on 3.7.2009 on the ground that the forged documents were produced in the High Court, therefore, only the High Court had power to take cognizance. The Learned Sessions Judge upheld the Magistrate's order vide his order dated 25.7.2009 in Criminal Revision No. 200 of 2009 relying on the decision of K. Vengadachalam v. K.C. Palanisamy and Ors. 2005 UPCI 500 (SC), and held that the Learned Magistrate had passed a justified order.

3. It may not be out of context to mention that there was no question of invoking the provisions of Section 195 of the Code at the stage of passing an order u/s 156(3) of the Code or at the stage of investigation. The provision is attracted

only when the Magistrate is required to take cognizance of the offence/offences u/s 190 of the Code.

4. Section 195(1)(b)(ii) of the Code has specifically provided that any offence described u/s 463 or punishable under Sections 471, 475 or 476, I.P.C. or any criminal conspiracy to commit or attempt to commit or abetment of, any such offence is cognizable only on the complaint in writing of the concerned court or on the complaint of such officer of the Court as may be authorized by the Court in writing in this behalf or on the complaint of such other court to which the Court concerned is subordinate, if such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court. Therefore, Section 195(1)(b)(ii) of the Code is not attracted in regard to a document alleged to have been forged prior to its filing in the Court. Such provision is attracted when any forgery is committed after filing of the document in the Court in a judicial proceeding.

5. A Constitution Bench of the Apex Court in the case of Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, has very clearly held that Section 195(1)(b)(ii) of the Code would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court, i.e., during the time when the document was in custodia legis.

6. It may be pertinent to mention that the Sessions Judge, Faizabad, after placing reliance on K. Vengadachalam's case (supra) himself observed that where the forgery is alleged to have taken place in respect of the document produced in evidence in any court, the bar of Section 195(1)(b)(ii) of the Code is not attracted but failed to appreciate the controversy involved in the case in its correct perspective and also failed to apply the said settled principles to the facts of this case. The proper course for the Sessions Judge was to see as to what were the allegations in the complaint and whether the forgery in regard to the documents filed in the High Court was committed prior to, or after, their filing in the Court. If the forgery had been committed before filing the documents in the High Court, there was No. question of applying the bar of Section 195(1)(b)(ii) of the Code.

7. As per the allegations made in the petition moved by the applicant before the Magistrate, the documents which were alleged to be forged were filed in the proceeding of this Court after committing the forgery outside the Court and there was No. allegation that the forgery was committed in such documents after their production in the concerned judicial proceeding of this Court.

8. Neither the Magistrate nor the Sessions Judge was justified in rejecting the applicant's application u/s 156(3) of the Code on the ground of bar of Section 195(1)(b)(ii) of the Code.

9. For the reasons discussed above, the petition is allowed. The order dated 3.7.2009 passed by the II-Judicial Magistrate, Faizabad as well the order dated

25.7.2009 passed by the Sessions Judge, Faizabad are quashed. The Learned Judicial Magistrate is directed to reconsider the applicant's application u/s 156(3) of the Code and pass appropriate order in accordance with law.