

(1999) 10 RAJ CK 0030

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 144 of 1996

Gulshan Ali and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-10-1999

Acts Referred:

Criminal General Rules, 1986 — Rule 81

Criminal Procedure Code, 1973 (CrPC) — Section 195, 195(1), 340

Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2000) CriLJ 1025

Hon'ble Judges : G.L. Gupta, J

Bench : Single Bench

Advocate : G.K. Vyas, for the Appellant; Chandralekha, Public Prosecutor and K.L. Thakur and S.N. Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

G.L. Gupta, J.—Through this misce. petition, petitioners seek quashment of the F.I.R. No. 1/94 of P. S. Sadar, Bikaner and the proceedings of Criminal Case No. 394/95 pending in the Court of Addl. Chief Judicial Magistrate No. 3, Bikaner u/s 420, 467, 468, 471 and 120-B, IPC.

2. The facts of the case may be put in narrow compassions On 27-12-93 Raisa Bano lodged a written report to the Superintendent of Police, Bikaner stating that her husband Yunus Ali had purchased a plot in Soor Sagar, Bikaner on 22-7-88 by a registered sale deed and he was doing his business on the two shops constructed thereon but on 2-5-92 he expired and Yasin Ali (brother of her husband) and Gulhasan (father of her husband) forcibly took possession of the shops and they have fabricated a false document alleged to have been executed in their favour by her husband late Yunus Ali on 12-8-88. This report was sent to the S.H.O., P. S. Sadar where F.I.R. No. 1/94 was registered. During the investigation, the police on coming to know that a civil suit was already pending in respect of the shops, made a request to the Civil Court for handing over the

document filed in the case. The learned District Judge directed the delivery of the document to the police which was sent to the Forensic Science Laboratory for examination and report from where it was reported on 31 -10-94 that the disputed signatures "Q1" to "Q3" on agreement were not of Yunus Ali and they were forged signatures. Consequent upon the completion of the investigation, the police submitted a challan against the petitioners.

3. There was one development in between the period the document was delivered by the District Judge to the police and the report of the F.S.L. was received. The order of the District Judge dt. 4-3-94 directing the delivery of the document to the police was challenged in this Court by way of Civil Revision Petition No. 324/94 which was allowed by this Court on 5-4-94 without notice to the respondent. It was held that the District Judge had erred in giving the document to the police without the permission of the High Court which was required under Rule 81 of the General Rules (Criminal), 1986. This Court directed the police to deposit the document in the Court of district Judge. Consequent upon the order of this Court, the District Judge directed the police to deposit back the document within two days but the same could not be deposited as it had already been sent to the F.S.L.

4. Mr. Vyas, learned counsel for the petitioners contended that since the alleged forged document had already been filed in the Court of District Judge the cognizance for the offences Under Sections 467, 468, 471 could be taken only on written complaint of the Court as is provided in Section 195(1)(b)(ii), Cr. P.C. and the cognizance taken on the challan filed by the police is liable to be quashed. In support of his contention he cited the case of Gopalakrishna Menon and Another Vs. D. Raja Reddy and Another, His further contention was that as the document had already been filed in the Civil Court, only that Court could adjudicate whether the document was forged one and the police had no power to investigate the case. In support of this contention, he cited the case of Kailash Chandra v. State of Rajasthan 1998 Cri LR 100. Mr. Vyas urged that since this Court had held in the civil revision that the District Judge had erred in handing over the document to the police and the document be re-deposited the investigation on the document was illegal and challan could not be filed on the basis of such investigation.

5. The learned P. P. and Mr. Thakur, on the other hand, contended that the forgery is not alleged to have been committed after the document was filed in the Court, and therefore, the bar of Section 195(1)(b)(ii), Cr. P.C. does not apply to this case. In support of their contention they cited the case of Sachida Nand Singh and Another Vs. State of Bihar and Another, They canvassed that the ruling of Gopalakrishna Menon, 1983 Cri LJ 1599 (supra) does not hold field in view of the decision in the case of Sachida Nand Singh (supra). Mr. Thakur pointing out that the point at issue in the case of Kailash Chandra 1998 Cri LR 100 (supra) was very different and contended that the ruling of Sachida Nand Singh (supra) was not brought to the notice of the learned single Judge who

decided the case of Kailash Chandra (supra). His further contention was that it may be that there was irregularity in giving the document to the police but that would not undo the offence which has been committed by the petitioners and the proceedings of the case wherein the allegation are that the accused who are brother-in-law and father-in-law had forged document to deprive the widow of the property left by her husband should not be quashed.

6. I have given my thoughtful consideration to the submissions. Undisputedly it is not the case where the forgery is alleged to have been done when the document was in the custody of the Court. The Apex Court in the case of Sachida Nand Singh and Another Vs. State of Bihar and Another, had clearly Laid down that the bar contained in Section 195(1)(b)(ii) Cr. P.C. is not applicable to the cases where the forgery of the document was committed before it was produced in a Court. Their lordships observed that for the application of the bar of Section 195(1)(b)(ii) the offence should have been committed during the time when the document was in custodia legis. It is significant to point out that in this three single Bench ruling the case of Gopal Krishna 1983 Cri LJ 1599 (SC) (supra) which was decided by two Hon'ble Judges was considered. Their lordships noticed that the case of Gopal Krishna (supra) was decided on the basis of law Laid down in the cases of Patel Laljibhai Somabhai Vs. The State of Gujarat, and Dr. S.L. Goswami Vs. The High Court of Madhya Pradesh at Jabalpur, It was observed as follows:--

The forgery alleged in Goswami's case took place during the period when the document in question was in the custody of the Court and in such a case the bar u/s 195(1)(b)(ii) would certainly apply. But with great respect, we are unable to agree that the ratio in Laljibhai Somabhai would support the conclusion reached in Gopal Krishna Menon and Another Vs. D. Raja Reddy and Another,

7. It is obvious that the view taken in the Gopal Krishna v. D. Raja Reddy (supra) relied on by Mr. Vyas was not approved by their Lordships. The legal position thus is that the bar of Section 195(1)(b)(ii) Cr. P.C. does not apply if the forgery was committed before the document was produced in the Court. There is, therefore, no merit in the contention of Mr. Vyas that cognizance of the offence could not be taken on the basis of the challan filed in the case.

8. In the case of Kailash Chandra v. State 1998 Cri LR 100 (supra) the learned single Judge has taken the view that after the civil Court comes to the conclusion that the document was a forged one it could proceed u/s 340, Cr. P.C. and file criminal complaint u/s 195, Cr. P.C. In my opinion this judgment cannot be said to have Laid down the law that cognizance cannot be taken on the basis of challan filed in respect of a document if the forgery was committed before the document was filed in the Court.

9. Coming to the third contention, it may be stated that on the basis of the order of this Court dt. 5-4-94 in Civil Revision Petition No. 324/94 the proceedings of the pending case cannot be quashed. It is evident that by the time the S.H.O.

got intimation of the order of this Court dt. 5-4-94 he had already sent the document for examination to the FSL. It was, therefore, not possible for the S.H.O. to deposit the document within two days as directed by this Court. It is pertinent to point out that this Court had not restrained the police from holding investigation in the matter. In my opinion, on the basis of the irregularity that the District Judge had handed over the document to the police for investigation without the permission of this Court, the investigation does not get vitiated. In any case once the cognizance of the offence has been taken by the Magistrate the same cannot be quashed on that ground. This Court cannot be justified in quashing the cognizance on such technical ground in a case where the document was forged by none-else but the father-in-law and the brother-in-law of the first informant widow to deprive her of the property left by her husband.

10. On a careful consideration of the entire material on record, I do not find that it is a case where there is abuse of the process of the Court when the petitioners are facing trial.

11. Consequently, the petition being devoid of merit, is dismissed.