
(2005) 03 JH CK 0031

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 5253 of 1999 (R)

Jadu Mahto and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 195, 195(1), 196, 340
Penal Code, 1860 (IPC) — Section 192, 193, 420, 466, 467

Citation : (2005) 3 JCR 429

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : S.N. Rajgarhia and Prabir Chatterjee, for the Appellant; I.N. Gupta, Assistant Public Prosecutor and Manoj Tondon, for the Respondent

Final Decision : Allowed

Judgement

Hari Shankar Prasad, J.—This application u/s 482 of the Code of Criminal Procedure (hereinafter to be referred as "Code"), has been filed for quashing the entire criminal proceeding including the order dated 29.6.1999 passed in complaint (Official) Case No. 57 of 1999 whereby and where under the learned Chief Judicial Magistrate, Dhanbad took cognizance.

2. Facts giving rise to the filing of this application are that O.P. No. 2-Sub-Divisional Magistrate, Dhanbad (Complainant) lodged a complaint before the Chief Judicial Magistrate, Dhanbad stating inter alia therein that a proceeding under Section 144, Cr PC being M.P. Case No. 409 of 1998 was started against the petitioners and one Nand Lal Sharma (witness in this case). In the proceeding, both parties appeared and filed their show-cause and also photocopy of their documents on 27.7.1998. On behalf of the petitioners, one photocopy of the registered partition deed No. 407 dated 14.8.1927 was filed but the other side suspected the genuineness of the documents, although translated version of the original documents in Hindi was placed before the Court for perusal and the Court allowed the first party to examine the documents. The Advocate claimed

that translation is correct but suspected the genuineness of the document. Thereafter original document was returned to the petitioners-second party and a photocopy along with Hindi translation was retained and the case was disposed of.

3. On 3.8.1998 a petition was filed by the first party to the proceeding stating therein that a certified copy of the alleged deed No. 407 of 1927 has been secured from the Registration Office, Purulia, West Bengal on 30.7.1998 and the entire description of the said deed filed in the Court is totally different from the record maintained in the Registration Office. The deed No. 407 was registered on 12.2.1927 but it has been endorsed in Book No. 1, Vol No. X at Page Nos. 120 and 121, whereas the deed presented in the Court speaks Book No. 1, Vol No. VI, Page Nos. 266 and 267 and the parties are also different and the land in the column 18 is of Chandankiary in the sale deed whereas the deed produced before the Court relates to the land of Saraidhela as Partition deed. Therefore, M.P. Case No. 436 of 1998 was started u/s 340, Cr PC for holding inquiry. The notices were served and accused persons were directed to produced original document which was produced before the Court in course of hearing on 27.7.1998, which was returned to the accused persons. As many as 25 dates were allowed but original documents were not produced nor any justification was shown as to why a forged document has been filed.

4. On the said complaint, the Chief Judicial Magistrate, Dhanbad registered complaint case No. 57 of 1998 against the petitioners under Sections 192/193/420/466/467/468/471, IPC (Annexure-1).

5. Learned counsel appearing for the petitioners submitted that in the M.P. Case No. 409 of 1998, in course of O.P. No. 2 a final order was passed on 28.7.1998 vacating the rule was against Sri Nand Lal Sharma (first party in the said case) and made it absolute against the petitioners. The petitioners filed a revision before the 2nd Additional Sessions Judge, Dhanbad being Cr Revision No. 80 of 1998 and by order dated 13.11.1998 the learned Court was pleased to dismiss the revision being infructuous.

6. It was further pointed out that in relation to the same plot of land, Nand Lal Sharma filed a suit being Title Suit No. 82 of 1998 and also filed a petition for injunction with prayer to restrain the petitioners from going over the disputed land, but the prayer for injunction of the petitioners was rejected and the order of status quo was passed and earlier order was also vacated. It was further pointed out that as stated in the complaint petition, the learned S.D.M., Dhanbad initiated a case for inquiry u/s 340, Cr PC on the complaint made by the said Nand Lal Sharma and directed the petitioners to produce original document but in view of the above statement, the petitioners were unable to do so on the dates fixed and by order dated 11.6.1999 the S.D.M., Dhanbad was pleased to hold that non-production of original document gave sufficient cause for doubt and hence he decided to lodge complaint before the Chief Judicial Magistrate and the present complaint is the result. It is further submitted that from perusal of the complaint, it will appear that translation filed by the petitioner was examined

by the learned Advocate of Nand Lal Sharma and he confirmed that it was correct. It stated that deed produced before this Court relates to the land of Saraidhela is a partition deed. It was further pointed out that in view of the above statement in the complaint petition, question of tampering or forging document does not arise at all. It is an admitted fact that life of a proceeding u/s 144, Cr PC is only sixty days and the same expired long-long ago and the present complaint was filed on 11.6.1998 after about one year from the date of order passed in 144, Cr PC proceeding and is hopelessly barred by limitation. It is further submitted that the case of the prosecution is not that some forgery has been committed after production of the document in the Court.

7. It was further pointed out that in the facts and circumstances of the case, there is no application of Sections 340, Cr PC or 195 and 196, Cr PC because even if it is accepted that some forgery has been committed, but that forgery has not been committed with the documents which were lying in the custody of the Court and, therefore, the procedure adopted u/s 340, Cr PC is misconceived which is applied in the present circumstance of the case and, therefore, cognizance taken in the above mentioned case is without jurisdiction and will occasion substantial failure of justice and if the same is allowed to continue, then it will amount to abuse of the process of the Court.

8. On the other hand, learned counsel appearing for the State submitted that the case has properly been filed and cognizance has properly been taken. In this connection, he placed reliance upon Dy. Commissioner of Prohibition and Excise, Nizamabad Division, Nizamabad, Andhra Pradesh and Another Vs. Balaji Cattle Feeds and Another, wherein it has been held that acceptability of material to fasten guilt of accused is matter of trial and in the instant case, trial can only set the controversy at rest whether petitioners were guilty or not. Reliance was also placed upon State of Andhra Pradesh Vs. Golconda Linga Swamy and Another, wherein it has been held that the inherent jurisdiction though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the test specifically laid down in 482, Cr PC and this power should be exercised only to prevent abuse of the process of the Court but should not be exercised to stifle legitimate prosecution and the High Court should not assume the role of the trial Court and embark upon inquiry as to reliability of evidence and sustainability of accused by reasonable appreciation of such evidence and, therefore, it was submitted that order of the learned Court below does not require any interference....

9. In course of submission on behalf of the learned counsel for the petitioner, it was stated that the so-called forgery or anything like that was never committed with the documents as the same were lying in the custody of the Court. In this connection, reliance was placed upon 1986 Cri LJ 1983 wherein it has been held that Section envisages bar against the prosecution in respect of offence mentioned under Sections 195(1)(b)(ii) and 340, Cr PC except on complaint of Civil Court and it is limited in its operation to offence committed while the

document is in custody of the Court and here in the instant case, no forgery is alleged to have been committed while the document was in custody of the Court. Reliance was also placed upon Mahadev Bapuji Mahajan (dead) and another Vs. State of Maharashtra, wherein it has been held that offence of forging documents committed before start of proceedings before revenue Court and complaint by revenue Court before which such documents were produced and in the instant case when cognizance is taken that is invalid and should be quashed. In this connection, my attention was drawn to Para-3 which is quoted herein below :--

"3. Leave was granted limited to the question of sanction as required u/s 195 of the Cr PC of 1973. It was contended before the High Court that u/s 195, Cr PC of 1973, the complaint should be filed by the Court concerned and then the Criminal Court can take cognizance of the offences mentioned u/s 195(1)(b), Cr PC. The submission was based on the ground that in the instant case, the charge sheet was filed in 1975 and hence the provisions of Section 195, Cr PC were attracted since the complaint was not filed by the Revenue Court before which a proceeding was deemed to be pending and the alleged offences of forgery were committed in respect of documents produced or given in evidence in such proceedings. In other words, the submission is that when offence is alleged to have been committed in respect of documents produced or given in evidence in the proceedings in Revenue Court and since the Revenue Court has not filed any complaint, the Criminal Court has no jurisdiction to take cognizance of the offences. On behalf of the State it was contended that in the instant case, a complaint was filed long before the new Code came into force and the offences thereby deemed to have been committed before the proceedings commenced. Therefore, the question of Revenue Court's giving the complaint did not arise. This aspect has been considered by the High Court in great detail. Regarding the offences committed before the start of the proceedings, the High Court, in our view, has rightly held that no complaint is necessary by the Court concerned either in the old Code or in the new Code. Therefore, the contention that the absence of a complaint by the Revenue Court was a bar for taking cognizance by the Criminal Court in respect of these offences which were committed even before the start of the proceedings before the Revenue Court cannot be sustained. The view taken by the High Court appears to be correct."

Reliance was also placed upon Sachida Nand Singh and Anr. v. State of Bihar and Anr. 1998 (1) ECC 894 (SC) : 1998 (3) PLJR SC 13 wherein same principle was adopted.

9. Upon consideration of the entire facts and case laws referred above, it is clear that any inquiry u/s 340, Cr PC should be held only when forgery is alleged to have been committed with the documents while in custody of the Court and thereafter case as laid down u/s 195, Cr PC should be filed. But here in the instant case, forgery is alleged to have been committed with "the documents not while in custody of the Court and, therefore, Sub-Divisional Magistrate had no jurisdiction to lodge a complaint before the Court of Chief Judicial Magistrate,

though any party can file complaint but the Court can not file such complaint case. Therefore, filing of the complaint by the Sub-Divisional Magistrate is without jurisdiction,

10. In that view of the matter, this application is allowed and the entire criminal proceeding including the order dated 29.6.1999 passed in complaint (Official) Case No. 57 of 1999 is hereby quashed.