
(1999) 01 DEL CK 0059
In the Delhi High Court
Case No : Criminal M (M) No. 2389/96

Jaswant Kaur

APPELLANT

Vs

Harnam Kaur

RESPONDENT

Date of Decision : 07-01-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195

Citation : (1999) 77 DLT 343 : (1999) 48 DRJ 543

Hon'ble Judges : D.K. Jain, J

Bench : Single Bench

Advocate : Rajat Aneja, for the Appellant; V.N. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Jain, J.—This petition u/s 482 of the Code of Criminal Procedure, 1973 (for short the Code) read with Article 227 of the Constitution of India is directed against the order, dated 26 August 1996, passed by the Additional Sessions Judge, Delhi, dismissing petitioner's revision petition against the Metropolitan Magistrate's order dated 19 April 1994, whereby petitioner's application for discharge on the ground that the private complaint filed against her by the respondent under sections 191/193/199 IPC was hit by the bar created u/s 195(1)(b)(i) of the Code, as the complaint had not been filed by the court concerned, was dismissed.

2. Mohan Singh, husband of Jaswant Kaur, petitioner herein, died on 2 February 1982, leaving behind certain assets, which included property No. 102A, Junk Market, S.P. Mukherjee Market, New Rohtak Road, New Delhi. On Mohan Singh's death, his mother, Harnam Kaur, the respondent herein, wrote to Delhi Development Authority (for short the DDA) seeking information about the latest position of the mutation of the said shop, which had been allotted to late Mohan Singh. Having failed to get any response from the DDA, the respondent instituted a civil suit against the petitioner for declaration and permanent injunction, inter alia, seeking a declaration in respect of her rights in the said shop and a direction

to the DDA to enter her name in its records with regard to the said shop. The DDA was also made a party in the suit. In its written statement, the DDA disclosed that the petitioner had applied for transfer of license rights in the shop in her name on the strength of an affidavit asserting that she was the sole legal heir of deceased Mohan Singh. The suit was, however, dismissed in default.

3. Alleging that by making a false declaration in the affidavit, filed with the DDA, describing her as the sole legal heir of Mohan Singh, before a public servant (an officer of the DDA), who was authorised by law to receive the same as evidence to the fact regarding the surviving legal heirs of Mohan Singh, the petitioner, Jaswant Kaur, had committed an offence u/s 199 IPC, punishable in the same manner as if she had given false information within the meaning of section 191 IPC, the complaint in question was filed by the respondent. On being summoned, the petitioner filed an application for discharge on the plea that since the DDA officials were not authorised under law to receive any declaration/evidence, section 199 IPC could not be invoked against her. The objection did not find favor with the learned Metropolitan Magistrate, who held that since the affidavit in question had not been filed in original before a court, section 195 IPC of the code was not applicable. Criminal revision petition filed against the said order was also dismissed by the learned Additional Sessions Judge, holding that the DDA was authorised under the Hindu Succession Act to receive declaration from any person claiming the allotment in his or her name on the basis of his or her being the legal heir of an allottee. Hence the present petition.

4. I have heard Mr.Rajat Aneja, Advocate for the petitioner and Mr.V.N. Sharma, Advocate for the respondent.

5. Though in the petition the complaint under sections 191/193/199 IPC has been challenged as null and void on various grounds but before me, taking of the cognizance . of the complaint by the Metropolitan Magistrate was assailed by learned counsel for the petitioner, only on two grounds, namely, i) that the allegations in the complaint do not constitute an offence u/s 193 or 199 IPC and even if taken on face value these could at best make out a case u/s 181/182 IPC, for which, the complaint could be filed only by the public servant concerned or by some other public servant to whom he was administratively subordinate and ii) even if the allegations in the complaint were accepted in entirety, the complaint u/s 193/199 IPC could be filed only by the court concerned or by some other court to which that court was subordinate and none else. It is submitted that as such no cognizance on respondent's complaint could be taken by the Metropolitan Magistrate. In support of his plea that complaint under sections 181/182 IPC lies only if made by the public servant concerned, reliance is placed on a decision of the Supreme Court in Daulat Ram Vs. State of Punjab, and of the Madhya Pradesh High Court in Krishnagopal Vs. Purushottam and Another, , wherein it has been held that there is an absolute bar against the court taking seisin of a case u/s 182 IPC except on a complaint by the public servant concerned. I am not persuaded to accept the contentions raised for the petitioner.

6. On the contention that no case u/s 193 or 199 IPC is made out in the complaint, since the case is at a preliminary stage, it will neither be proper nor fair to express a final opinion on this aspect. Having glanced through the complaint, which has been placed on record, I feel that the complaint prima facie spells out an offence u/s 199 IPC against the petitioner. Before effecting mutation an officer of the DDA is authorised by law to seek and receive information with regard to the legal heirs of an allottee and a declaration in that behalf would, prima facie, fall within the ambit of Section 199 IPC. I need say no more lest it may prejudice the trial.

7. Coming to the second contention urged by learned counsel for the petitioner, Section 195(1)(b) of the Code lays down that no court shall take cognizance of the offences mentioned therein, (including Sections 193 and 199 IPC) where such offence is committed in, or in relation to, any proceedings in any "court", except on the complaint in writing of such court or a court to which it is subordinate. Section 199 IPC provides that if a false statement is made in declaration, which is by law receivable as evidence, it would be an offence punishable in the same manner as if the accused had given false evidence. Section 193 IPC makes it an offence to give false statement whether it be in a judicial proceeding or not and it likewise makes it an offence to fabricate false evidence for use in judicial proceeding or elsewhere. It is evident that the bar in Section 195(1)(b) applies only when offences u/s 193 or 199 IPC are committed "in or in relation to", a proceeding in court.

8. Could the DDA be termed as a court within the meaning of the said section, is the material question?

9. Section 195(3) of the Code defines the term "court" as meaning a civil, revenue or criminal court and includes the tribunal constituted by or under a Central, Provincial or State Act, being declared by that Act to be a "court" for the purpose of Section 195 IPC. Admittedly, the DDA Act does not declare it to be so. It is not the case of the petitioner either. In *Shri Virindar Kumar Satyawadi Vs. The State of Punjab*, while dealing with the question as to what constitutes a court, it was observed by the Supreme Court that broadly what distinguishes a court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of the parties in a definite judgment by giving the parties an opportunity as a matter of right to be heard in support of their claims and to adduce evidence in proof of it and further it also imports an obligation on the part of the authority to decide the matter on a consideration of the entire evidence adduced. Considered in the light of the said broad principles, I am of the view that the officer of the DDA, deciding the question as to whether the rights in the property are to be transferred in favor of a legal heir, is not adjudicating the matter in a judicial manner like deciding a "lis" between the parties with opposing claims. He cannot determine as to whether a person is a legal heir of the deceased or not. He simply makes an enquiry, receives the declaration in support of the claim preferred by a legal heir

and acts on it. His decision on question of title is not final and can be assailed in a title suit. He cannot be said to be a court for the purpose of Section 195(1)(b) of the Code.

10. In this view of the matter, since the alleged declaration regarding the legal heirs was not filed in or in relation to any proceedings in court, it is but obvious that the bar in Section 195(1)(b) of the Code was not attracted and it cannot be held that cognizance of the complaint could not be taken by the learned Metropolitan Magistrate except on a complaint by the DDA. I am of the opinion that proceedings against the petitioner cannot be held to be illegal and void on the basis of the bar contained in Section 195 of the Code.

11. Since in the present case the complaint by the respondent is under Sections 191/193/199 IPC and not under Sections 181/182 IPC, the ratio of the two afore noted decisions relied upon by learned counsel for the petitioner does not apply on the facts of the instant case. I do not find any illegality or material irregularity in the impugned order warranting interference either in the exercise of the inherent powers or supervisory jurisdiction of this court. The petition, being without merit, fails and is accordingly dismissed.