
(2000) 06 AP CK 0015

In the Andhra Pradesh High Court

Case No : Criminal Petition No's. 2888 and 3799 of 1999

Karnati Bhaskar and Others

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 20-06-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 163, 173, 190, 195

Evidence Act, 1872 — Section 74, 75

Penal Code, 1860 (IPC) — Section 109, 120B, 172, 173, 174

Citation : (2000) 2 ALD(Cri) 231 : (2000) CriLJ 3983

Hon'ble Judges : J. Chalameswar, J

Bench : Single Bench

Advocate : P. Venugopal Rao and T. Bheemsen, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

1. Chalameswar, J.—These two petitions raise an important question of law as to the scope and applicability of Section 195 of the Code of Criminal Procedure.

2. For the sake of convenience, the facts in Criminal Petition No. 2888 of 1999 are mentioned as the issue involved in both the matters is one and the same.

3. The first petitioner in the Criminal Petition No. 2888 of 1999 filed a suit O.S. No. 85 of 1990 on the file of the learned Senior Civil Judge, Miryalaguda against the third respondent herein for recovery of an amount of Rs. 53,527/-. The said claim was made on the basis of a receipt-dated 14-1-1988 said to have been issued by the third respondent herein. The second petitioner is said to be the scribe of the receipt. Petitioners 3 and 4 are said to be the attestors of the said receipt.

4. During the course of trial of the above-mentioned suit, the third respondent herein got the above-mentioned receipt referred to handwriting expert for his opinion. According to the third respondent the signature on the said receipt was

not of his and was a forged signature. The expert to whom the receipt was referred to opined that the signature was not that of the third respondent herein but was a forged signature. However, the learned Senior Civil Judge did not agree with the opinion of the expert, but came to a conclusion that the receipt was fabricated on a paper, which contained the signature of the third respondent without his consent and knowledge. The said suit was dismissed and I am informed that the matter became final.

5. On the dismissal of the said suit the third respondent herein filed a private complaint on 9-11-1998 on the file of the learned Judicial First Class Magistrate, Miryalaguda against the four petitioners herein alleging that the commission of offences under Sections 467, 468 and 420 of the Indian Penal Code read with Section 34 of the Indian Penal Code. The learned Magistrate referred the matter to the police u/s 156(3) of the Code of Criminal Procedure and the police registered a case in Crime No. 248 of 1998.

6. The present Criminal Petition No. 2888 of 1999 is filed with a prayer to quash the FIR in Crime No. 248 of 1998 on the file of the learned Judicial First Class Magistrate, Miryalaguda.

7. Coming to the facts of Criminal Petition No. 3799 of 1999 the first petitioner executed an agreement of sale-dated 23-2-1984 in favour of the de facto complainant's sister for the sale of land admeasuring an extent of Ac.0.70 cents with an existing building. The agreement holder in turn executed a registered sale deed dated 15-7-1993 in favour of the complainant and it appears the lady died on the next day i.e., on 16-7-1993. A private complaint is filed on 22-7-1997 against the petitioners alleging that on 4-6-1997 the petitioners and others have trespassed into the house, which was bequeathed to the complainant and took away certain valuable articles from the house. The learned Magistrate referred the matter to the police u/s 163 of the Code of Criminal Procedure on 31-7-1997. Subsequently the police registered a crime and it appears that they filed a final report u/s 173 of the Code of Criminal Procedure, the exact date of the report is not available on record. The substance of the complaint against the petitioner is that the petitioner executed two agreements of sale in favour of the 4th and 2nd accused respectively on 22-2-1997, 18-4-1997 with reference to the property, which was the subject matter of the original agreement of sale between the first petitioner and the deceased lady on 23-2-1984. The complainant, therefore, alleged the commission of offences under Sections 120-B, 454, 380, 427, 468, 471 and 506 read with Section 109 of the Indian Penal Code . It is relevant to mention that the petitioners filed O.S. No. 167 of 1997 on the file of the learned Principal District Munsif, Gudivada for a permanent injunction restraining the complainant from interfering with the possession of the petitioner. In the said suit, the original deeds of agreement executed in favour of accused Nos. 4 and 2 referred to earlier were produced.

8. The submission made in both the petitions is that the offences described in Section 463 or the offences punishable u/s 471 are offences, which could be

taken cognizance of by any Court only upon a complaint in writing of the Court in which the documents said to have been forged were produced or given in evidence.

9. The learned counsel appearing for the petitioners argued that in view of the specific embargo created u/s 195 of the Code of Criminal Procedure the criminal proceedings against the petitioners herein insofar as they relate to offences u/s 463 or u/s 471 as the case may be are not maintainable".

10. Section 195 of the Code of Criminal Procedure declares that no Court shall take cognizance of the various offences enumerated in that Section except on the complaint in writing of that Court, where the offence is said to have been committed in, or in relation to, any proceeding of that Court. For the purpose of present petitions the relevant portion of Section 195(1)(b)(ii) which reads as follows :

Section 195 No Court shall take cognizance :

(a) ...

(b) (ii) of any offence described in Section 463, or punishable u/s 471, Section 475 or Section 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, or.

11. In support of their submission the learned counsel for the petitioners strongly relied on a judgment of the Supreme Court rendered in Surjit Singh and others Vs. Balbir Singh, . Their Lordships dealing with the issue at para 11 of the judgment held :

It would thus be clear that for taking cognizance of an offence, the document, the foundation for forgery, if produced before the Court or given in evidence, the bar of taking cognizance u/s 195(1)(b)(ii) gets attracted and the criminal Court is prohibited to take cognizance of offence unless a complaint in writing is filed as per the procedure prescribed u/s 340 of the Code by or on behalf of the Court. The object thereby is to preserve purity of the administration of justice and to allow the parties to adduce evidence in proof of certain documents without being compelled or intimidated to proceed with the judicial process. The bar of Section 195 is to take cognizance of the offence covered there under .

12. On the other hand the learned Public Prosecutor brought to the notice of this Court a recent judgment of the Supreme Court rendered in Sachida Nand Singh and Another Vs. State of Bihar and Another, . Dealing with the same issue another Division Bench of the Supreme Court posed the issue in the following terms (para 7 of Cri LJ) :

6. A reading of the clause reveals two main postulates for operation of the bar mentioned there. First is, there must be allegation that an offence (it should be either an offence described in Section 463 or any other offence described in

Section 471, 475, 476 of the IPC) has been committed. Second is that such offence should have been committed in respect of a document produced or given in evidence in a proceeding in any Court. There is no dispute before us that if forgery has been committed while the document was in the custody of a Court then prosecution can be launched only with a complaint made by that Court. There is also no dispute that if forgery was committed with a document, which has not been produced in a Court, then the prosecution would lie at the instance of any person. If so, will its production in a Court make all the difference?" and came to the conclusion that "the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a Court.

13. The learned counsel for the petitioners argued that the later judgment of the Supreme Court did not consider the view expressed by the Supreme Court earlier. In *Surjit Singh and others Vs. Balbir Singh*, and also that the later judgment of the Supreme Court in *Sachida Nand Singh and Another Vs. State of Bihar and Another*, did not reflect the correct legal position in view of the series of judgments referred to by the Supreme Court earlier on the same issue.

14. Both the judgments referred to above are rendered by division benches of the Supreme Court of equal strength consisting of three judges.

15. Before examining the various judgments of the Supreme Court on this issue I deem it appropriate to examine the various provisions of the Criminal Procedure Code and the Indian Penal Code.

16. Sections 195, 196, 197, 198, 198(A) and 199 from a group of Sections which restrict the powers of the Magistrates (conferred by virtue of Section 190 of the Code of Criminal Procedure) to take cognizance of offences. Each of the above mentioned Sections deal with certain categories of offences enumerated in the Indian Penal Code. Section 195 deals with the offences against the public justice and offences relating to documents given in evidence. Section 196 deals with the offences against the State and for criminal conspiracy. Section 197 of course, does not deal with any specific category offence but deals with the status of a person who is alleged to have committed an offence. The section prescribes certain procedure before an offence alleged to have been committed by a person (who was a Judge or a Magistrate or a public servant) is taken cognizance by the Magistrate. Sections 198 and 198(A) deal with the prosecution of offence against marriage and Section 199 deals with prosecution of offences of defamation falling under Chapter XXI of the Indian Penal Code.

17. The Parliament while incorporating these provisions under Criminal Procedure Code thought it fit to create certain restraints in the matter of prosecuting the persons charged with the offences of various categories mentioned in each of the said sections. The object and reasons for creating such restraints are different and separate with reference to each of the said sections.

18. Coming to Section 195, it stipulates such restriction in the context of

offences punishable under (1) Sections 172 - 188 of the Indian Penal Code; (ii) Sections 193 - 196, 199, 200, 205 - 211, 228 and 230 of the Indian Penal Code; and (iii) Sections 462, 471, 475 and 476 of the Indian Penal Code.

19. Sections 172 - 188 occur in Chapter X of the Indian Penal Code. Heading of Chapter indicates that it deals with the offences of Contempt of the Lawful Authority of public servants in its various forms.

20. Coming to Sections 193 etc., they occur in Chapter XI of the Indian Penal Code, which deals with the false evidence and offences against public justice. The other category of offences u/s 462 etc., occur in Chapter XVIII dealing with offences relating to documents and to property marks.

21. In these two petitions I am concerned with third category of offences dealt with u/s 195 of the Code of Criminal procedure i.e., the offences relating to documents. Section 463 defines offence of forgery. In substance Section 463 makes it an offence on the part of any person to create any false document with an intention to cause damage or injury either to public or any other person or with an intention to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud. What is meant by making a false document is explained u/s 464. Section 465 prescribes the punishment for an offence of forgery. Sections 466, 467, 468 and 469 deal with the various aggravated forms of forgery. In fact Section 466 deals with the situation where the document forged is a public document, whereas Section 463 does not make any such distinction.

22. The distinction between a public document and a private document is well recognized under Sections 74 and 75 of the Evidence Act. The importance of a public document lies in the fact, that the normal rule of evidence with reference to proof of the contents of a document, that the document itself must be produced for the inspection for the Court is relaxed with reference to public documents. Therefore, commission of an offence of forgery with reference to a public document is viewed by the lawmakers as an aggravated form of forgery, which deserves a greater punishment than a punishment imposed for committing an offence of forgery with reference to a private document.

23. Necessarily the question would arise as to the object sought to be achieved or the reason, which prompted the lawmakers to impose restrictions on the initiation of Criminal Proceedings against the persons who are alleged to have committed the offences of forgery in any one of its forms recognized by the Indian Penal Code.

24. Offences against the lawful authority of public servants in its various aspects and offences dealing with the giving of false evidence or fabricating the same which are treated as offences against public justice. The Parliament obviously must have thought that the commission of any one of those offences would eventually have an effect on the administration of the "State" in its various branches. Therefore, it is provided u/s 195 of the Code of Criminal Procedure

that in a given case if criminal proceedings are to be initiated against the person who is said to have committed any one of those above mentioned offences, such proceedings should be initiated by the concerned Court, as otherwise there could be large volume of reckless criminal litigation at the instance of private parties which might not be productive of any public good but might also be counter productive of public good.

25. Coming to the third category of the offences dealt with u/s 195 of the Code of Criminal Procedure, (offences relating to the documents) as noticed earlier, the offences could be committed either with reference to a public document or a private document. Such offence of forgery if committed in the context of public document, could damage to the public administration and is likely to affect the society at large and therefore, more severe punishment is prescribed.

26. The fact remains that whether it is a private document or a public document, if an offence of forgery is committed or alleged to have been committed and the document is produced or given in evidence in any Court, (the expression "Court" itself is explained in Clause 3 of Section 195 of the Code of Criminal Procedure) in any proceeding, depending on the relevance of such document, the result of the proceeding may vary. Obviously, if the document is not a genuine document, the result of the proceedings in the Court is likely to be in favour of a person who relies upon such a document, thereby resulting in injustice. Of course there can be cases where even if a document is produced or given in evidence in any Court, depending upon the nature of the proceeding, the Court might come to the conclusion that the document is irrelevant or otherwise inadmissible in evidence in view of some provision of law and the Court might not base its conclusions on such a document. In such cases, it cannot be said that by the production or giving in evidence of such a document, the administration of justice is in any way hampered or affected.

27. Whenever a false document is made with such an intention as is described u/s 463 of the Indian Penal Code, the offence of forgery is complete. It is immaterial whether the document is subsequently produced or given in evidence in any legal proceeding before any Court or authority legally authorized to adjudicate upon the rights of the parties. When such a document is produced in any judicial proceeding before any Court a distinct offence falling u/s 192 of the Indian Penal Code is committed for which a punishment is prescribed u/s 193 of the Indian Penal Code. Since it is an offence, which could be committed only in connection with the proceeding. Section 195(i)(b)(1) of the Indian Penal Code mandates that such an offence could be taken cognizance of by a Court only on a written complaint made by the Court before which such an offence is committed. On the other hand, in the context of giving in evidence of documents which are alleged to have been brought into existence by committing an offence of forgery, two distinct offences known to the Indian Penal Code are committed; one is the act of forgery and the other is the act of giving in evidence of such a document brought into existence by forgery, in a judicial proceeding.

28. To accept the submission of the petitioners that whenever such a situation arises even with reference to the offence of forgery (which was complete even before the document entered the Court), only the Court before which such a document is given in evidence or produced could legally lodge a complaint, in my view, would achieve no purpose or any public good and perhaps would render the provisions of the Indian Penal Code i.e., Section 463 and Section 465 wholly ineffective.

29. What exactly is the embargo or prescription u/s 195(1)(b)(ii) of the code of Criminal Procedure requires examination. The sub-section contemplates the commission of an offence (1) described u/s 463 or (2) punishable under Sections 471, 475 or 476 of the Indian Penal Code and such an offence must be alleged to have been committed in respect of a document produced or given in evidence in a Court.

30. Section 471 deals with a distinct offence of using a forged document fraudulently or dishonestly as genuine. Sections 475 and 476 deal with offences relating to marks for authenticating documents such as seals of the Court etc. Coming to the offence described u/s 463, as already noticed, depending on the nature of the document said to have been forged, the gravity of the offences varies and the corresponding punishment. To say that irrespective of the fact, whether such an offence was committed at a point of time before which the document was either produced or given in evidence before the Court or after the production or giving in evidence of such a document in a judicial proceeding, it is only the Court which received such a document that could complain, in my view, is inconsistent with the scheme of Section 195 of the Code of Criminal Procedure. In a given case if a document is forged and a party who is likely to be affected by the creation of such a document makes complaint, before such a document is actually used by the maker for deriving any benefit out of such a document by producing the same before a Court or some other public authority, the prosecution would certainly be legal. If such a document is to be produced before a Court subsequent to the initiation of the prosecution, there is nothing in the law, which prohibits the continuation of the prosecution. In fact, their Lordships of the Supreme Court in Sachida Nand Singh and Another Vs. State of Bihar and Another, visualized such a situation and observed :

There is also no dispute that if forgery was committed with a document which has not been produced in a Court then the prosecution would lie at the instance of any person....

31. Therefore, it would be illogical to think that the Parliament intended to prohibit prosecution at the instance of a private party for an offence of forgery merely because such a document was produced or given in evidence before a Court by the time the person affected by such document came to know of the offence.

32. The maintainability of prosecution for an offence cannot merely depend on an

accident as to the point of time at which the prosecution is sought to be launched unless such a stipulation is demonstrably made to achieve some larger public purpose. Because in theory, all law is always made for achieving some public good and for the benefit of the body politic to which it is made applicable. I see no such larger purpose in the scheme of Section 195 of the Code of Criminal Procedure if it were to be interpreted in the way the learned counsel for the petitioners submitted.

33. In view of my foregoing discussion and following the judgment of the Supreme Court in Sachida Nand Singh and Another Vs. State of Bihar and Another, these two Criminal Petitions are dismissed.