

(1988) 02 AP CK 0021

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 1049 of 1987

K.V.R. Iyyangar

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 05-02-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 195(1)

Evidence Act, 1872 — Section 62

Penal Code, 1860 (IPC) — Section 120B, 463, 465, 468, 471

Citation : (1988) 1 APLJ 186

Hon'ble Judges : Sardar Ali Khan, J

Bench : Single Bench

Advocate : L. Nageswara Rao, for the Appellant; Ella Reddy, for the Respondent

Judgement

1. This is a petition to quash all further proceedings in C.C. No. 579 of 1987 on the file of XVI Metropolitan Magistrate. Hyderabad.

2. The petitioner herein is A-2 in C.C. No. 579 of 1987. A private complaint has been filed by one S. P. Radhakrishna against Smt. D. L. Bhavani (A-1) and the petitioner under Ss. 468 and 471 read with S. 120-B of the Indian Penal Code. The matter is referred to the Station House Officer under S. 156(3), Cr.P.C. for investigation and report. The case has been registered as Crime No. 93 of 1987 and a charge sheet has been filed under the above sections.

3. The main ground on the basis of which the quashing of the proceedings in C.C. 579 of 1987 is urged is that a forged document has been filed before the VI Metropolitan Magistrate, Hyderabad in another case and the same is not triable by the XVI Metropolitan Magistrate in view of the provisions of S. 195(1)(b), Cr.P.C. It may not be out of place to reproduce S. 195(1)(b), Cr.P.C. which is in the following terms :

"195.(1) No court shall take cognizance -

(a)

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely Ss. 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in or in relation to any proceeding in any court, or

(ii) of any offence described in section 463, or punishable under S. 471 S. 475 or S. 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

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that court, or of some other court to which that Court is subordinate."

4. The learned counsel for the petitioner argues that there is a bar for taking cognizance of the offence punishable under Ss. 468 and 471 of the Indian Penal Code when such offences are alleged to have been committed in respect of a document produced in a Court except on the complaint in writing of that Court. It is, however, evidence in this case that the document which has been filed before the VI Metropolitan Magistrate is a copy containing a recital that a sum of Rs. 1,80,000/- is payable by the complainant in C.C. 579/87 to Smt. D. L. Bhavani. It is to be taken into consideration that under S. 62, Explanation-2 of the Evidence Act it is provided that where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography each is primary evidence of the contents of the rest but where they are all copies of a common original, they are not primary evidence of the contents of the original. It is true as argued by the learned counsel for the petitioner in this case that the provisions of S. 62 will not have a direct bearing on this matter as that section deals only with the admissibility of a document. Nevertheless, it cannot be overlooked that a photostat copy or a Xerox copy of a document is not considered as primary evidence of the original document but is at the most primary evidence of a similar photostat or Xerox copy of such a document. Now, it is beyond all doubt that the document which has been filed before the VI Metropolitan Magistrate is a Xerox copy and not the original containing the recital of the liability of the complainant to pay a sum of Rs. 1,80,000/- to Smt. D. L. Bhavani. Therefore, the further question that arises is, can it be determined in the absence of the original document as to whether that document has been forged or not. In order to establish an offence of forgery under S. 463, IPC which is punishable under S. 465, IPC the presence of the original document before the Court concerned, is necessary. If the original document is not before the Court and what is produced is merely a copy albeit a photostat copy still it cannot be determined as to whether the document has been forged or not. There are many intricacies attached to establish forgery of a document, to mention only a few, for instance, the style of the signature of a person, the alleged pressure on the pen at the time when it was signed, the variation in the ink if there are other

petitions of ink written in the same document, the quality of the paper used and seen so forth. All these things necessitate that the original document should be before the Court to establish the offence of forgery. A photostat copy which has come into being as a result of improvement in scientific photography of the documents cannot reflect all these matters. The privy Council in the decision in *Sanmukh Singh v. The King* AIR 1950 PC 31 : (51 Cri LJ 651) has categorically held that there the document in respect of which a charge of forgery had been laid against the accused had not itself been produced or given in evidence in certain proceedings but on the contrary a copy of it had been produced, the absence of complaint under S. 195(1)(c) Criminal Procedure Code cannot operate as a bar to the trial of the accused. The learned counsel for the petitioner has stated that at the time when the decision was made by the Privy Council in 1950, the facility of a photostat copy or Xerox copy was not in vogue and now that the photostat copies have come into being, it cannot be said that such photostat copies do not form primary evidence of the original document. I am afraid I do not see much force in this argument for the simple reason that it is not at all necessary even with the advance technique of a photostat copy that it should be identical in all respects of ink, of texture of the paper, of the style of writing of a person not to mention the quality of the paper itself which has been used. Therefore, the logic of the Privy Council's decision still stands the test of time and in the absence of an original the Provisions of S. 195(1)(b) of the Code of Criminal Procedure cannot be deemed to have come into play to divest the jurisdiction of the XVI Metropolitan Magistrate, in this case. Another decision which is squarely on this point, is contained in *Modumal In Re* (1966) 2 Andh WR 89, Gopal Rao Ekbote, J. as he then was in that case has categorically held :

"It is plain that sanction of the superior court or the complaint of the Court is necessary when the offences referred to in that clause have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding. The two vouchers, in respect of which it is alleged that the offence of forgery is committed by the accused, have not been produced or given in evidence in the Small Causes Court in the said two suits."

5. The jurisdiction of the XVI Metropolitan Magistrate would be deemed to have been divested only in case the original document was produced before the VI Metropolitan Magistrate document in the proceedings before that court. The Xerox copy of the document in question having been lodged in the VI Metropolitan Magistrate Court, the XVI Metropolitan Magistrate cannot be restrained from exercising the jurisdiction properly vested in him. The provisions of S. 195(1)(b) of the Code of Criminal Procedure are not applicable to this case for the reasons which has been discussed above.

6. In the result, the criminal petition is dismissed.

7. Petition dismissed.