
(2016) 10 MP CK 0006
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 265 of 2016

Mahesh Khubani	Vs	APPELLANT
Rajkumar Sharma		RESPONDENT

Date of Decision : 03-10-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195(1)(b)(ii), Section 340, Section 482

Citation : (2017) 172 AIC 293

Hon'ble Judges : Mr. Alok Verma, J.

Bench : Single Bench

Advocate : Mr. Sameer Athawale with Shri Amit Purohit, Advocates, for the Applicant; Mr. Ashutosh Nimgaonkar, Learned Counsel, for the Respondent No. 1; Mr. Yogesh Mittal, Learned Counsel, for the Respondent No. 2/State

Final Decision : Dismissed

Judgement

Mr. Alok Verma, J.—This application is filed under Section 482 r.w.s. 340 of Cr.P.C. for quashing proceedings against respondent No.1 for producing forged document before this court.

2. The relevant facts are that wife of applicant Bhawna purchased a house situated at 8 Jail Road, New 24, Devi Ahilya Road, Indore from heirs of late Bhikaji Sharma on 01.12.2010. Thereafter, respondent No.1 on the basis of forged documents also registered a sale deed in respect of some property.

3. Respondent No.1 filed an application under section 482 Cr.P.C. for quashing the criminal proceedings against him under section 482 Cr.P.C. which was registered as M.Cr.C. 1968/2014. This application was withdrawn by respondent No.1 and the court while allowing withdrawal of the application observed as under :-

"Learned counsel for the applicant has sought permission to withdraw the M.Cr.C.

Shri A.S. Kutumble, learned counsel for the objector has submitted that since the

objector's application under Section 340 of the Cr.P.C. is pending in this case, therefore, withdrawal of the M.Cr.C. will affect the right of the objector to prosecute the application under Section 340 of the Cr.P.C.

Considering the aforesaid submissions, the applicant is permitted to withdraw the M.Cr.C. and the objector is granted liberty to file separate case under Section 340 of the Cr.P.C. Since the allegations are in respect of certain affidavits and documents filed in this M.Cr.C., therefore, office is directed to preserve the record of the M.Cr.C. for future proceedings."

4. Accordingly, after availing the liberty granted by this court to the applicant, this application is filed praying that forged documents were produced by respondent No.1, and therefore, necessary action should be taken against respondent No.1 under section 340 r.w.s. 195 (1)(b)(ii) of Cr.P.C.

5. Counsel appearing for respondent No.1 opposes the prayer vehemently.

6. Counsel for respondent No.2 submits that no case is made out.

7. Counsel for the applicant places reliance on judgement of Hon"ble Apex Court in case of Iqbal Singh Marwah v. Meenakshi Marwah reported at 2005 Cr.L.J. 2160. From the principles laid down by the Hon"ble Apex Court, it is apparent that sections 340 and 195 of Cr.P.C. do not create any independent offence but only prescribe procedure when offence is committed against the documents which were produced before the court and which were in custodia legis. The court observed in Para-6 of the judgement as under :-

"6. On a plain reading clause (b) (ii) of subsection (1) of Section 195 is capable of two interpretations. One possible interpretation is that when an offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 IPC is alleged to have been committed in respect of a document which is subsequently produced or given in evidence in a proceeding in any necessary. The other possible interpretation is that when a document has been produced or given in evidence in a proceeding in any Court and thereafter an offence described as aforesaid is committed in respect thereof, a complaint by the Court would be necessary. On this interpretation if the offence as described in the Section is committed prior to production or giving in evidence of the document in Court, no complaint by Court would be necessary and a private complaint would be maintainable. The question which requires consideration is which of the two interpretations should be accepted having regard to the scheme of the Act and object sought to be achieved."

8. The court further observed in paras-20 and 25 as under :-

"20. An enlarged interpretation to Section 195(1) (b)(ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in Court, is capable of great misuse. As pointed out in Sachida Nand Singh, after preparing forged document or committing an act of forgery, a person may manager to get a

proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the Court, where the document has been filed, itself chooses to file a complaint. The litigation may be prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of society at large.

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25. In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodia legis."

9. From the above observations made by Hon"ble Apex Court, it is apparent that the action could be taken against the offender only when offence is committed when the documents are in custody of the court that is custodia legis.

10. The counsel also places reliance on judgement of Hon"ble Apex Court in case of Kishorbhai Gandubhai Pethani v. State of Gujarat and another reported at (2014) 13 SCC 539. In this case, the case of Iqbal Singh Marwah (supra) was followed and similarly the judgement cited by the counsel for the applicant in case of George Bhaktan v. Rabindra Lele reported at 2014 AIR SCW 6532, the Hon"ble Apex court observed in paras-20 and 21 as follows:-

"20. In the case at hand, as we find, the allegation in the complaint is that the respondents had forged the signature of the complainant and submitted to the Corporation seeking extension of the period of supply. Thereafter, seeking certain relief as suit was filed and in the suit the document was filed. There is no allegation that this document was forged when the matter was sub-judice before the Civil Court. Thus, the dicta of the Constitution Bench is squarely applicable. The High Court has clearly erred in relying on the principle stated in the Gopalkrishna Menon's case (AIR 1983 SC 1053) (supra) which makes the impugned order wholly indefensible.

21. We have already taken note of the submission of Mr. Rao that the High Court has not adverted to the factual score whether a case has been made out on the basis of the material brought on record. In the absence of any findings in that regard by the High Court, we do not intend to take up the burden on ourselves. That makes it obligatory on our part to set aside the order passed by the High

Court and remand the matter to it for fresh consideration whether in the obtaining factual matrix the order of cognizance deserves to be lanced. We would request the High Court to dispose of the petition within a period of three months as the matter has been continuing for long. We may hasten to clarify that we have not expressed any opinion on the merits of the case."

11. Learned counsel for the applicant submits that after investigation, it was found that the documents were forged and charge-sheet has been filed. Therefore, this aspect that the documents are forged and when such documents are produced before the court, the action should be taken under section 340 r.w.s. 195 of Cr.P.C.

12. However, I do not find any force in this argument, the bar created by section 195 only comes in operation when the offence is committed in respect of some documents which are produced before the court which are in custodia legis. If the offence is committed prior to their submission before the court, no bar comes in way and prosecution can be initiated. In this case, also the prosecution is already going on against respondent No.1. The documents were forged prior to their production before the court. He is facing trial, in which, question of forging the documents is under consideration, and therefore, no case is made out for conducting any preliminary inquiry as provided by section 340 Cr.P.C. in this case and this application has no force and liable to be dismissed and is dismissed accordingly.