(2007) 09 AHC CK 0238

In the Allahabad High Court

Case No : Criminal R. No. 127 of 2001

Major Sukhdayal Singh APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 27-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195, 195(1)
Penal Code, 1860 (IPC) — Section 172, 173, 174, 175, 176
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9A, 9A(3)

Citation : (2008) 2 ACR 1738

Hon'ble Judges : M.K. Mittal, J

Bench : Single Bench

Advocate : Apul Misra, for the Appellant; A.N. Srivastava, Pankaj Srivastava and Neeraj Kumar Srivastava, for the Respondent

Judgement

M.K. Mittal, J.—This revision has been filed against the judgment and order dated 23.9.1999, passed by 6th Addl. Sessions Judge, Rampur in Criminal Revision No. 117 of 1998 whereby he allowed the revision and set aside the order dated 28.8.1998 passed by the learned C.J.M., Rampur in Criminal Case No. 2003 of 1998 under Sections 420, 467, 468 and 417 I.P.C., P.S. Bilaspur, District Rampur.

2. Brief facts of the case are that Major Sukh Dayal Singh the revisionist filed a written report at P.S. Bilaspur on 5.4.1997 alleging that his wife, husband and son had agriculture land in village Chandiyan, P.S. Bilaspur. Since they were not living in the village at the relevant time the accused Rajendra Singh and Jogendra Singh, forged their signatures before the Assistant Consolidation Officer and got the land transferred in the name of Kulveer Singh, Kishan Singh and Himmat Singh. When the record was seen for the purpose of filing appeal it came to notice that even the original papers were replaced by forged documents. On that basis case was registered and subsequently charge-sheet was submitted against the accused persons. Learned Magistrate summoned the accused and the accused persons filed objection 27-Ka and 29-Ka alleging that the alleged fraud if any was committed in the Court proceedings and therefore, the prosecution was

barred by Section 195, Cr. P.C., and prayed for discharge. However, learned Magistrate did not accept their contention and rejected their applications. Against that order a revision was filed in the lower revisional court which accepted the contention as raised by the accused persons and held that criminal proceedings were barred by Section 195, Cr. P.C. Consequently he allowed the revision. Feeling aggrieved present revision has been filed.

3. I have heard Sri Apul Mishra, learned Counsel for the revisionist, Sri A. N. Srivastava, learned Counsel for the opposite party, learned A.G.A., and perused the material on record.

4. Learned Counsel for the opposite party has raised a preliminary objection that the revision is barred by limitation as it has been filed with delay of 485 days and that no reasonable explanation for the delay has been given by the revisionist. In this connection, learned Counsel for the revisionist has contended that an application has been filed for condonation of delay and according to the learned Counsel the revisionist came to know for the first time on 19.3.2001 about the impugned order as he was not made party in the criminal revision filed by the opposite parties before the Sessions Judge. Learned Counsel for the revisionist has also contended that on 18.3.2001 deponent Smt. Sukhjinder Jeet Kaur had come to the Court of A.D.M., Rampur and then on enquiry she came to know about the order passed in criminal revision for the first time and thereafter she informed the revisionist.

5. Learned Counsel for the opposite parties has contended that this plea as taken by the revisionist that he was not impleaded as party in the revision is not acceptable because he was not a necessary party and was not required to be impleaded. This contention of the learned Counsel for the opposite parties cannot be accepted. If a criminal revision is filed accused should also implead the informant as he is aggrieved person.

6. It may be mentioned that there is reference in para 5 of the impugned order that notice was sent to the informant and also the special counsel of the informant but no one appeared and thereafter learned Sessions Judge heard the learned Counsel for the State Government. But this order does not show whether the notice sent to the informant was served on informant or not. It does not show that the information given to the special counsel was received by him or not. In this connection, opposite parties have filed the certified copy of the order sheet with counter-affidavit as Annexure CA-7. The order sheet dated 30.8.1999 shows that the learned Court directed that the notice be issued to the complainant and his special counsel be also informed and fixed 20.9.1999 for hearing of the case. The order sheet dated 20.9.1999 shows that notice issued to the complainant was not received back and that his counsel was also informed but was not present.

7. Learned Counsel for the opposite parties has also contended that Sri Khalilullah Khan advocate was special counsel for the informant in the Court of

C.J.M. and he had moved an application for adjournment (copy Annexure-CA-6) on 22.8.1998 and had signed that application. According to the learned Counsel for the opposite parties order sheet dated 30.8.1999 also bears the signature of Sri Khalilullah Khan and he also tried to compare them with the signature on the application Annexure-CA-6.

8. Learned Counsel for the revisionist has contended that the signature on the order sheet dated 30.8.1999 is not of Sri Khalilullah Khan and it does not tally with the signature on application Annexure-CA6. This contention of the learned Counsel for the revisionist is correct as the perusal of the two signatures shows that they are not of the same person. Moreover by order dated 30.8.1999 it was directed by the revisional court that special counsel be also informed. In the circumstances there was no occasion for the special counsel to have signed the order sheet dated 30.8.1999. Had he signed the order sheet on 30.8.1999, he must have been present on that date and then there was no occasion for the Court to direct that he be informed in the matter. Again Sri Safiuddin, junior counsel to Sri Khalilullah Khan gave affidavit which has been filed as Annexure-RA-2 and there he has mentioned that the order sheet dated 30.8.1999 does not bear the signature of his senior counsel Sri Khalilullah Khan. In the circumstances there is no reason to discard this statement given by Sri Safiuddin on affidavit. Thus, I come to the conclusion that although the revisional court directed for informing the informant and special counsel, but it appears that they could not be served and therefore, none was present on their behalf. In the circumstances the contention of learned Counsel for the revisionist that revisionist had no knowledge of the impugned order prior to the date alleged is correct and therefore, the delay in filing the revision is liable to be condoned and is hereby condoned.

9. Learned Counsel for revisionist has contended that learned lower court has wrongly held that the bar of Section 195, Cr. P.C. was applicable in this case because the documents were forged outside the Court and not in the Court proceedings. Against it learned Counsel for the opposite parties has contended that learned revisional court has rightly held that the bar of Section 195, Cr. P.C. was applicable because compromise was prepared in the Court and not outside the Court as it was the statutory duty of the Assistant Consolidation Officer to make efforts for conciliation and according to the prosecution case the accused presented imposters before the Assistant Consolidation Officer who signed the compromise papers in his presence and thereafter he made an endorsement accepting the compromise papers. It has also been alleged by the prosecution that Smt. Sukhjinder Jeet Kaur and Sukh Dayal Singh did not sign before the Assistant Consolidation Officer as they were not present and the accused persons presented some other persons in their place. Compromise papers have been filed as Annexures-C.A. 1, 2, 3 and 4. According to learned Counsel for the opposite parties Section 9A of U.P. Consolidation of Holdings Act conjoins a duty upon the Assistant Consolidation Officer to make efforts for conciliation and to decide the matters on that basis. He has further contended that compromise was entered

into between Smt. Sukhjinder Jeet Kaur who had power-of-attorney of Major Sukh Dayal Singh, Kripal Singh (dewar). Opposite party has given a family pedigree in para 5 of the affidavit of Rajendra Singh and it shows that accused Rajendra Singh is brother of Smt. Sukhjinder Jeet Kaur, mother of present revisionist. However, the fact remains that the compromise was given final shape in the Court of Assistant Consolidation Officer. u/s 9A (3), it is provided that Assistant Consolidation Officer while acting under Sub-section (1) of Section 9A shall be deemed to be a Court of competent jurisdiction. In the circumstances, the contention of the learned Counsel for the revisionist that the alleged forgery was committed outside the Court is not correct.

10. Section 195, Cr. P.C., reads as under :

Section 195. Prosecution for contempt of lawful authority of public servants for offences against public justice and for offences relating to documents given in evidence :

1. No Court shall take cognizance-

(a) (i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate ;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, Sections 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 proceedings in any Court, or

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

11. In the case of Sachida Nand Singh and Another Vs. State of Bihar and Another, , it was observed that bar of this section would not be applicable to a case, where forgery of document was committed before the document was produced in the Court. A different view was expressed by the Hon''ble Apex Court in case of Surjit Singh v. Balbir Singh (1996) 2 SCC 533. This question came up for consideration in the case of Iqbal Singh Marwah v. Meenakshi Marwah 2005 SCC 1101: 2005 (2) ACR 1379 (SC), where Hon''ble Apex Court has observed as under :

Clause (b) (ii) of Section 195(1), Cr. P.C., contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or given in evidence in a proceedings in any Court. The scheme of Clauses (a) and (b) (i) of Section 195(1) being that the offence described therein should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression "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" occurring in Clause (b) (ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the Court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in Court does not appear to be in tune with Clause (a) (ii) and (b) (i) and consequently with the scheme of Section 195, Cr. P.C.

12. Therefore, if any fraud has been committed in a document after it has been filed in the Court bar of Section 195, Cr. P.C. is applicable and the cognizance in the matter can be taken if the complaint is filed by that Court or a superior court. In this case also the bar was applicable as the alleged forgery was made in the Court of Assistant Consolidation Officer and, therefore, the complaint should have been filed by him or his superior court but it was not so done and therefore, the summoning order as passed by the learned Magistrate was rightly set aside by the revisional court.

13. Thus I come to the conclusion that there is no merit in this revision and there is no justifiable and justifiable ground to interfere in the impugned order. Revision is devoid of merits and is liable to be dismissed and is hereby dismissed.