

(1982) 11 AHC CK 0013

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 438 of 1981

Mithlesh Kumar Gupta

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 11-11-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195, 195(1), 195(3), 244, 245
Industrial Disputes Act, 1947 — Section 22, 6H(1)
Penal Code, 1860 (IPC) — Section 467, 471

Citation : (1983) 7 ACR 90

Hon'ble Judges : M. Wahajuddin, J

Bench : Single Bench

Advocate : J.N. Dubey and N.K. Chaturvedi, for the Appellant; A.G.A. and V.N. Agarwal, for the Respondent

Judgement

M. Wahajuddin, J.—The applicant has come forward with a prayer that the order dated 29-4-1980 of the Special Judicial Magistrate, Agra in Criminal Case No. 211 of 1982 under Sees. 467 and 471, IPC (Mithlesh Kumar v. Bhagwan Dass Sathi Criminal Case No. 211 of 1982), dismissing the applicant's complaint and the order dated 4-11-1980 of the Second Additional Sessions Judge in revision may both be quashed, and the Court may pass such orders as it deems fit.

2. It would appear that Sri Bhagwan Dass Sathi who is a trade union leader preferred an application before the Assistant Labour Commissioner on behalf of a large number of workers making a claim for certain amount on their behalf. The Assistant Labour Commissioner in pursuance of such application issued a certificate as is provided for in Section 6H(1) of the Industrial Disputes Act. The applicant filed a criminal complaint urging that out of the persons on whose behalf the application was preferred by opposite party No. 2, 10 persons are genuine claimants and one, namely, Sohan Lal, was dead by that time and the remaining others had neither signed nor authorised the opposite party No. 2 to make any claim on their behalf. In the complaint it was urged that actually the signatures of such persons were forged and a forged document was prepared

and filed by opp. party No. 2 as a claim before the Assistant Labour Commissioner. It seems that both the courts below made a bias approach in the sense that the Judicial Magistrate held that the complaint was barred by Section 195 Code of Criminal Procedure while the revisional court held that though it is not so the complaint is barred by Section 22 of the Industrial Disputes Act. Of course in addition to that the Magistrate held that prima facie case is not disclosed which conclusion was upheld by the revisional court.

3. I am conscious of the fact that ordinarily the Court will not exercise inherent powers when there are concurrent findings of the two courts below. But Section 482 empowers the Court to correct any abuse of the process of law or to undo any injustice.

4. The complaint is not barred by Section 195 Code of Criminal Procedure. Sub-section (3) of Section 195 Code of Criminal Procedure expressly laid down:

In Clause (b) of Sub-section (1) the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a court for the purposes of this section

Offences Under Sections 467 and 471 are some of the offences specified u/s 195(1)(b)(ii) but to attract the application of the Section naturally it has to be shown that the document in respect of which offence is alleged to have been committed was produced or given in evidence in proceedings in any court and as to what is meant by Court is again laid down in Section 195(3) Code of Criminal Procedure. An Assistant Labour Commissioner is neither a revenue court nor criminal court. It has also not been shown that he is appointed to preside over any Tribunal under the appropriate Act and that Tribunal has been declared by the Act constituting the Tribunal to be a Court within the meaning of Section 195(3) Code of Criminal Procedure. Such notification is requisite as was held in the case of Sudhindra Kumar Deb Vs. Gopika Ranjan Datta, and in the case of Nawab Mohd. Azhar Khan v. State (?) Allahabad Criminal Rulings page 75. In the circumstances Section 195 Code of Criminal Procedure does not bar the private complaint.

5. As regards bar u/s 22 of the Industrial Disputes Act is concerned two conditions are to be satisfied-(1) the act is done or intended to be done in good faith and (2) the act is done as such in pursuance of the Industrial Disputes Act or any rule or order made or deemed to be made thereunder. If prima facie any offence is disclosed the persons charged with an offence can very well come forward and take shelter behind that section but before such person puts in appearance and takes any such plea of that nature either by means of application or otherwise at any later stage and the matter is examined, it is not possible to record any finding of fact on this point and without a finding of fact the bar could not be attracted. The bar contained u/s 22 of the Industrial Disputes Act is not absolute but qualified. The two conditions aforesaid have to

be satisfied and then the bar would operate. In the result it would appear that the very basic approach of the Magistrate as well as the revisional court is erroneous. It is stated in the complaint that opposite party No. 2 filed a claim application on behalf of a number of people and some signatures were forged and one man was not even alive. It is alleged that it is the opposite party No. 2 who identified the signatures. The revisional court laid stress upon the case of Hiralal Jain Vs. Delhi Administration, . It is a case in which an Advocate engaged by some persons for identifying them concerning land acquisition compensation money claimed, identified them though they were not genuine persons. That was a case of lawyer and the consideration that weighed with the court was that in district court men in fact sometimes make wrong identification by misrepresentation. The matter is a mixed question of fact and law. It is always open to the opposite party after putting appearance to raise such plea which the court would consider. I do not desire to express any further opinion on facts as one or the other party may be embarrassed by any observation and any prejudice may be caused. The best course in the circumstances of the present case is to quash the order dated 29-4-1980 of the Magistrate and the order dated 4-11-1980 of the revisional court. In fact, opposite party No. 2 had already been summoned. The Magistrate has to observe the procedure laid down in Sections 244 and 245 Code of Criminal Procedure unless even before recording any further evidence he finds it a case for discharge. I may also mention that a plea u/s 22 of the Industrial Disputes Act is a plea based on mixed question of facts and law. Unless on the facts established before the Magistrate it is shown prima facie before the Magistrate that the two conditions are made out a bar of Section 22 of the Industrial Disputes Act as such would not apply. It will be open to the Magistrate to consider this plea. I am surprised that how the revisional court proceeded to consider such type of plea neither urged nor raised before the trial court.

6. In the result, the application is allowed with the aforesaid observations.