

(1986) 01 AHC CK 0060

In the Allahabad High Court

Case No : Criminal Misc. Application No. 651 of 1986

Ram Kishore and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 20-01-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195(1), 200, 202, 244, 294(1)
Penal Code, 1860 (IPC) — Section 419, 463, 467, 468, 471

Citation : (1986) 10 ACR 318 : (1989) RD 75

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : Surendra Prasad, for the Appellant;

Final Decision : Dismissed

Judgement

B.D. Agarwal, J.—Heard learned Counsel.

2. On December 23, 1983, the opposite party No. 2 brought a complaint in writing against the applicants in the Court of the Munsif-Magistrate, Gyanpur district Varanasi, contending, in brief, that on November 28, 1983, the applicants had, in furtherance of common intention, got a deed of sale executed in favour of Ram Kishore (applicant No. 1) by Amar Nath (applicant No. 3) representing, however, that the executant is the complainant (Shyam Kishore alias Kishori Lal). The contention is that the complainant did not, in fact, execute the deed in question and that Amar Nath has impersonated for the complainant in this respect. Subsequent to the statement recorded under Sections 200, 202 Code of Criminal Procedure the accused were summoned for the offence under Sections 419, 467, 468 and 471 Indian Penal Code. The statement of the complainant u/s 244 of the Code has also been recorded. An application was made from the side of the complainant in the trial Court u/s 294(1) of the Code. Section 294(1) provides that where any document is filed before any Court by the prosecution the particulars of every such document shall be included in a list and the accused or his Counsel shall be called upon to admit or deny the genuineness of such

document. The complainant had got summoned, from the office of the Sub Registrar, the deed of sale impugned dated November 28, 1983. The application was made in respect of this document. To this there was objection raised from the side of the accused. The (sic)section has been overruled by order of the Court below dated August 29, 1985. Aggrieved the accused-applicants have approached this Court u/s 482 of the Code.

3. Learned Counsel contends that the Munsif-Magistrate could not take cognizance in view of Section 195(1)(b)(ii) of the Code since there is a suit instituted by the complainant in the civil Court for the cancellation of the deed of sale dated November 28, 1983. It may not be doubted that though the offence under Sections 419, 467 and 468 Indian Penal Code is not specifically referred to in Section 195(1)(b)(ii), these are covered in view of the reference made therein to the offence described in Section 463 of the Indian Penal Code and since the offence under these sections is said to arise from the same transaction vide *State of Karnataka v. Hamareddy @ Vermareddy* (8) 1981 ACC 112 ; *Smt. Maharaji and Others Vs. Rama Shanker and Another*, ; *Ram Pal Singh Vs. State of U.P. and Others*, and *Gopalakrishna Menon and Another Vs. D. Raja Reddy and Another*, .

4. The material fact, however, is that as the learned Counsel for the applicant-accused admits, the suit in the civil Court was instituted by the opposite party No. 2 the complainant for cancellation of the deed of sale subsequent to the filing of the complaint dated December 23, 1983, meaning thereby, in other words, that on the date when the complaint was filed and also when cognizance was taken thereon by the Munsif-Magistrate, there was no suit in the civil Court pending. The bar created u/s 195(1)(b) is to the effect that no Court shall take cognizance of any offence referred to therein 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. This, therefore, stands in the way of cognizance being taken by the criminal Court in the particular situation arising as mentioned thereunder. Since in the present the cognizance had been taken by the criminal Court prior to the proceeding in the civil Court coming into existence and before the document could be produced or given in evidence in the civil proceeding, it is obvious that Section 195(1)(b)(ii) is not attracted. Secondly from the material placed before me it is not indicated that in the civil Court the impugned deed of sale has been filed in original. From the order impugned dated August 29, 1985, it is clear on the contrary that the deed of sale has been summoned from the side of the complainant in the criminal Court from the office of the Sub Registrar. In the objection raised from the side of the accused in the Court below it is nowhere indicated that the deed of sale in original had been produced in the civil Court. For both these reasons, namely, that the cognizance had been taken prior to the institution of the suit in the civil Court and since it is not shown that the deed of sale had been filed in original in the civil Court, the accused cannot, in my opinion, invoke the aid of Section 195(1)(b)(ii) aforesaid.

5. In *Ram Pal Singh Vs. State of U.P. and Others*, cited for the applicants, this

Court held that the provisions of Section 195(1)(b)(ii) apply also to cases where an offence of the nature specified therein is committed prior to the institution of the proceeding in which the concerned document is eventually produced or filed and cognizance of such offence at the instance of private complaint would be barred. This is not the point arising in the present. It is not of consequence that the document impugned had come into being before the suit in the civil Court was filed; the material factor is that the cognizance of the offence had been taken by the criminal Court prior to the institution of the civil suit and that is not derecognized by virtue of anything contained in this provision. The complainant was not debarred from coming to the criminal Court in other words on December 23, 1985, as he did for the obvious reason that on that date there had been no proceeding in the civil Court initiated in respect of this transaction or the impugned instrument of transfer. For these reasons there is no merit in the contention for the accused applicants that the cognizance taken by the Court below in the matter is vitiated or rendered illegal. In view thereof the complainant had the right to avail of Section 294(1) of the Code in this case.

6. The application accordingly fails and is dismissed.

Application dismissed.