

(1998) 12 AHC CK 0097
In the Allahabad High Court
Case No : Criminal M.W.P No. 1229 of 1996

Ram Siyadas and Others

APPELLANT

Vs

IVth Additional Sessions Judge and Others

RESPONDENT

Date of Decision : 07-12-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 195, 195(1), 340, 340(1)
Penal Code, 1860 (IPC) — Section 465, 467, 468, 471

Citation : (1999) 1 ACR 3

Hon'ble Judges : O.P. Jain, J

Bench : Single Bench

Advocate : M.C. Chaturvedi, for the Appellant; S.S. Misra, Dharampal Singh, Avinash, V.S. Singh and Vishwa Jeet Singh, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Jain, J.—This writ petition has been filed against order dated 14th August. 1995 (modified by order dated 17th August, 1995) passed by C.J.M. Orai, u/s 156(3), Code of Criminal Procedure by which the police was directed to register a case and investigate the matter Under Sections 465, 467, 468 and 471. I.P.C. The order of the C.J.M. (Annexure-2) has been upheld by the Sessions Judge in revision; vide his order dated 2nd March. 1996 which is Annexure-6 to the petition.

2. The brief facts leading to the writ petition are that Suit No. 91 of 1992 for permanent injunction was instituted by Respondent No. 3 Om Prakash Das on the basis of a registered document dated 30.4.1987. Petitioner No. 1 Ram Siyadas filed an appeal against the order of temporary injunction and the appeal was allowed by the District Judge and the injunction order was vacated. The order of the District Judge was upheld by this Court in Writ Petition No. 42659 of 1992, decided on 13.5.1993.

3. Respondent No. 3 Om Prakash Das filed Anr. suit for cancellation of document dated 4.9.1991 executed in favor of Petitioner No. 1 Ram Siyadas by Petitioner

No. 2 Narendra. Respondent No. 3 Om Prakash Das filed an application u/s 340, Code of Criminal Procedure against the Petitioners and a criminal miscellaneous case was registered on its basis which is still pending.

4. Under these circumstances, Respondent No. 3 Om Prakash Das filed an application u/s 156(3). Code of Criminal Procedure in the Court of C.J.M., Jalaun at Orai praying that it may be forwarded to the police because, it was alleged, that the Petitioners have committed offences Under Sections 465, 467, 468, 471 and 420, I.P.C. On this application, the C.J.M. directed the police to register a case and investigate the matter. In compliance to the order, the police registered a case and proceeded to investigate. The Petitioners filed a revision before the Court of Session which was dismissed, vide order Annexure-6 dated 2nd March, 1996. Therefore, the present writ petition has been filed challenging the correctness of the order passed by the C.J.M. directing police to register a case and investigate. The main ground in the writ petition is that the power of attorney dated 26.9.1990 in favour of Narendra Singh and document dated 4th September, 1991 executed by Narendra Singh in favor of Ram Siyadas were produced before the civil court and, therefore, a complaint u/s 156(3), Code of Criminal Procedure is barred u/s 195. Code of Criminal Procedure

5. I have heard Sri V.P. Srivastava learned Counsel for the Petitioners and Sri B. S. Singh learned Counsel for the Respondents.

6. There was some controversy in the past as to whether cognizance on the basis of a private complaint is barred or not where the document has been produced before a civil court. This controversy has now been set at rest by the decision of the Apex Court in the case of Sachida Nand Singh and Another Vs. State of Bihar and Another, . After reviewing the previous cases, the Apex Court has held as under in paragraph 12:

The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in Court or given in evidence in a proceeding in that Court. In Ors. words, the offence should have been committed during the time when the document was in custodian legist.

7. A similar question came up for consideration before a Full Bench of this Court in the case of Ram Khelawan v. State of U.P. 1998 ACC 571 (FBI, and it was observed in paragraph 18 that if the plea of forgery has not been considered by any Court, the question of bar u/s 195(1)(b)(ii) of the Code of Criminal Procedure would not arise. In the instant case, the plea of forgery was not considered by the civil court and, therefore, the bar does not apply,

8. There is Anr. aspect of the matter. Section 195(1)(b)(ii), Code of Criminal Procedure bars the cognizance by the Court, but it does not prevent the police from investigating the case and collecting the material. The writ petition has been filed against order of the C.J.M. passed u/s 156(3) Code of Criminal Procedure by which investigation has been ordered. Therefore, the stage of

cognizance has not yet arrived. It has been held by this Court in the case of G.B. Gupta v. State of U.P. 1986 ALJ 1535, that even though the offence is such that the cognizance may not be taken by a Magistrate except upon a complaint made in writing by a civil court, there cannot be any bar against investigation being taken up and carried on by a police officer and collecting evidence or material, if any, during the course of investigation on F.I.R. being filed in respect of such offence.

9. In view of the above discussion, this Court comes to the conclusion that the document which is the subject-matter of investigation is not alleged to have been forged while it was in the custody of the Court and, therefore, the provisions of Section 195(1)(b)(ii) is not applicable. Even Ors. wise, this bar "does not apply to investigation and applies only to taking of cognizance.

10. In view of the above discussion, the writ petition is dismissed and interim order passed by this Court on 4th March, 1997 is vacated.