

(2015) 03 MP CK 0002

In the Madhya Pradesh High Court

Case No : Criminal Revn. No. 2515 of 2013

Samta Naidu and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 120-B, 420, 467, 468, 471

Citation : (2015) 4 BC 143

Hon'ble Judges : N.K. Gupta, J.

Bench : Single Bench

Advocate : Manish Datt, Sr. Advocate and Pushpendra Dubey, Advocate, for the Appellant; Ajay Tamrakar, Panel Lawyer, for the Respondent

Judgement

N.K. Gupta, J.—The applicants have preferred the present revision against the order dated 9.12.2013 passed by the XIIth Additional Sessions Judge, Jabalpur in Criminal Revision No. 261/2013 whereby, the Revisionary Court has directed to register the case against the applicants of offence under Sections 467, 468, 471 and 120-B of I.P.C. The facts of the case in short are that there were Bank accounts of the complainant G. Pradeep Naidu and his aunt Anni Bai and complainant and his father G. Shankar Rao. G. Shankar Rao had expired on 12.12.2001 whereas, Anni Bai had expired on 2.7.2004. After death of the aforesaid persons the complainant was the sole operator of the Bank Account. The applicant Dilip Naidu had applied before the Bank to get a fresh cheque book in name of Anni Bai and he had issued a cheque of Rs. 1,06,500/-. The signature of Anni Bai was made by the applicant Samta. Initially, the Bank has debited the amount in account of Rajesh Pharma and thereafter, when signature on cheque did not match with the standard signature of Anni Bai, the cheque was dishonoured. However, the applicant by preparing forged document committed crime of Sections 420, 467, 468, 471 and 120-B of I.P.C. The aforesaid facts have been pleaded by the complainant/the respondent in his complaint and the complaint was filed against the applicants. The trial Court vide order dated 5.7.2013 registered a complaint only for offence under Section 420 of I.P.C. In

the revision filed by the respondent the XIIth Additional Sessions Judge, Jabalpur by impugned order issued such directions as mentioned above.

2. I have heard the learned Counsel for the parties.

3. After considering the submissions made by the learned Counsel for the parties, it appears that the Revisionary Court has committed two mistakes of law, firstly that the Revisionary Court as Additional Sessions Judge cannot take cognizance in the case and therefore, no direction could be issued to the concerned Magistrate to register a complaint for particular offences. It was for the Additional Sessions Judge to remand the matter, so that the concerned JMFC should have passed an appropriate order whereas, the Additional Sessions Judge has directed to register a case under Sections 467, 468, 471 and 120-B of I.P.C.

4. Secondly, a handwriting expert who was examined by the complainant has given his opinion that cheque was prepared by the applicant Samta. However, he gave his opinion on the basis of two registers supplied by the complainant to him. The complainant G. Pradeep Naidu (PW 1) did not say anything about such registers in his statement and it was highly doubtful that alleged standard handwriting of Samta was provided to the handwriting expert S.K. Kelkar (PW 2) was of the applicant Samta or not and therefore, it cannot be said against the applicant Samta that she did any forgery or she used any forged document. Hence the direction given by the Additional Sessions Judge against the applicant Samta appears to be perverse and baseless.

5. Also it is pertinent to note that the cheque was placed before the Bank and no payment was made to the concerned person. For offence of cheating money or any consideration should have been passed on the basis of cheating otherwise offence of cheating under Section 420 of I.P.C. does not complete. It may be an attempt of that offence. Hence the Additional Sessions Judge has committed an error in confirming the order passed by the Magistrate concerned that offence under Section 420 of I.P.C. was made out against the applicants. Also if a fact that the applicant Samta filled up the cheque is not established, then there is no evidence to establish against Samta that she participated in crime of cheating. Hence, no complaint could be registered against the applicant Samta.

6. It is true that the complainant has established that the cheque book was obtained by the applicant Dilip and he used the cheque. However, it is not established by the complainant that who did commit the forgery and therefore even against the applicant Dilip, no offence under Sections 467, 468 of I.P.C. shall constitute. At the most offence under Section 471 of I.P.C. may constitute against the applicant Dilip.

7. On the basis of the aforesaid discussion, it would be apparent that order passed by the Additional Sessions Judge is perverse and against the settled principles of law and therefore, it cannot be sustained. Consequently, the revision filed by the applicants is hereby allowed. Order dated 9.12.2013 passed by the XIIth Additional Sessions Judge, Jabalpur is hereby set aside. Also the order

dated 5.7.2013 passed by the JMFC, Jabalpur is set aside. The JMFC, Jabalpur is directed to consider the entire evidence independently and thereafter, pass an order relating to registration of the criminal complaint against the applicants as per provisions of law. Observations made by this Court in the present order as well as observations given by the XIIth Additional Sessions Judge, Jabalpur shall not cause any prejudice to the JMFC while passing a fresh order. Copy of the order be sent to the Courts below for information and compliance.