
(1981) 01 AHC CK 0029
In the Allahabad High Court

Sheo Narain Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-01-1981

Acts Referred:

Criminal Law (Amendment) Act, 1932 — Section 7
Criminal Procedure Code, 1973 (CrPC) — Section 93
Penal Code, 1860 (IPC) — Section 120B, 161, 420, 468, 471

Citation : (1981) AWC 150 : (1981) CriLJ 635

Hon'ble Judges : Murlidhar, J

Bench : Single Bench

Judgement

Murlidhar, J.—This is a complainant's revision against a revisional order of the Sessions Judge by which the Magistrate was held to have no jurisdiction to take cognizance of the revisionist's complaint under Sections 120B, 420, 468, 471, I.P.C. and to issue a search warrant in accordance with Section 93, Cr. P.C.

2. The brief facts are that the revisionist filed a complaint against Ram Awatar Agarwal, Chairman and Bharat Bhushan, Manager of the Sanyukt Chhetriya Gramin Bank which is a statutory body with majority share capital held by Central and State Governments. There can be no question that the accused would in their capacity of Chairman and Manager be public servants. However, the complainant's case was that certain examination was to be held for recruitment of some categories of employees for the bank and the two accused persons settled with him that they would get his nephew appointed provided he paid them Rs. 10,000/- of which Rs. 2,000/- were paid by way of first installment. The examination was held. A large number of candidates were called for interview and after a long time first 19 persons were appointed as managers and then 42 others on some other posts but the complainant's nephew did not figure in the lists. It was further alleged that the accused persons had tampered with the papers, mark-sheets and other examination records in furtherance of their conspiracy to earn money from the candidates. The magistrate had taken cognizance and issued a search warrant for the examination records. In a

revision by the accused the Sessions Judge held that the allegations made out an offence u/s 161 I.P.C. and Section 5(2), Corruption Act which were exclusively triable by a special Judge u/s 7(1) Criminal Law Amendment Act and, therefore, the Magistrate had no jurisdiction to entertain the complaint.

3. The learned Counsel for the revisionist has urged that it was open to the complainant not to charge the accused for the offence of bribery u/s 161, I.P.C. or Section 5(2), Prevention of Corruption Act and confine his accusation to the offences of forgery and cheating committed against him and the ancillary offence of forgery. This is not quite correct. The complainant has no option so far as the legal definition of any acts or omission goes. If at all he may have an option about choosing only certain acts or omissions for his complaint. The definition of an offence means an act or omission prohibited by some law. Therefore, once any acts or omissions have been alleged, it must be taken to be an allegation of all the offences made out by the allegations of fact irrespective of whether the complainant chooses to specify all the legal offences or not. Therefore, the test will have to be whether the essential allegations of fact for the purpose of the offences of conspiracy, cheating and forgery which the complainant wants to prosecute are separable from the facts that make out offence u/s 161, I.P.C. and Section 5(2) Corruption Act. On the present complaint it seems clear that this is not possible for the very start of the conspiracy and cheating is the two accused's plan to extort money and consequent receipt of Rs. 2,000/- from the revisionist for getting his nephew selected in the examination and selection to be held for recruitment of staff. These facts sufficiently make out an offence u/s 161, I.P.C. as well as Section 5(2) Prevention of Corruption Act and, therefore, the bar of Section 7(1) Criminal Law Amendment Act against the Magistrate taking cognizance of the offence operates even though these two particular offences were not mentioned by the revisionist in his complaint. Jurisdiction cannot depend on the incorrect legal description of the offence made out by the facts in the complaint. The order of the Sessions Judge, therefore, does not suffer from any infirmity. The revision, fails.

4. The revision is hereby dismissed.