
(1995) 03 AHC CK 0006

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 3160 of 1995

Shiv Dayal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 156, 190, 195, 195(1), 195(1)
Penal Code, 1860 (IPC) — Section 120B, 420, 465, 466, 467
Prevention of Corruption Act, 1988 — Section 5(3)

Citation : (1995) 19 ACR 265

Hon'ble Judges : V.N. Mehrotra, J;S.N. Saxena, J

Bench : Division Bench

Advocate : Virendra Singh, for the Appellant;

Judgement

S.N. Saxena, J.—The Petitioners instituted this writ petition for issuance of a writ, order or direction in the nature of certiorari thereby quashing the first information report dated 3.1.1995 registered as Crime No. 2 of 1995 u/s 467/468/420, I.P.C. at P.S. Bindki, district Fatehpur, in the nature of mandamus thereby staying the arrest of the Petitioner in connection with the said F.I.R., direction to the concerned lower Court to dispose of the bail application of the Petitioners on the very day it is moved by them in connection with the said offences and if that be not possible, release the Petitioners on their furnishing personal bonds for the interim period. An application has been moved for interim relief also regarding the disposal of their bail application by the Chief Judicial Magistrate, Fatehpur and the learned District and Sessions Judge, Fatehpur, as prayed in the petition itself.

2. The dispute relates to the alleged fraudulent fabrication of two Wills dated 6.6.1994 and 6.9.1994 in respect of which an F.I.R was lodged on 3.1.1995 by Smt. Jai Rani at P.S. Bindki against the Petitioners. The allegations in brief as contained in the F.I.R. of Smt. Jai Rani were as follows:

One Badloo Prasad, who was the husband of Smt. Jai Rani, the informant, had died on 9.6.1994 without leaving any son, daughter or other legal heir except Smt. Jai Rani, who had inherited all his properties. Petitioners Shiv Dayal, Ram Sanahi, and Ram Autar had fabricated a Will dated 6.6.1994 executed allegedly by Badloo Prasad in respect of his properties including agricultural land in their favour. Bhiku Lal and Ramesh Kumar sons of Petitioner Shiv Dayal, thereafter, fraudulently got executed and registered another Will in their favour allegedly by Badloo Prasad on 9.6.1994 in respect of his properties. Neither of the two Wills actually was executed by Badloo Prasad. Someone else had impersonated him. Mutation applications sometime thereafter were moved by the Petitioners for mutation of their names against the agricultural land of Badloo Prasad in the concerned revenue Courts at Tahsil Bindki. The aforesaid Wills were got wrongly and falsely witnessed by Radhey Lal, Shiv Raj and others. Badloo Prasad was an educated man and used to sign. Shiv Dayal and others got affixed thumb impression of some other person upon the alleged Wills. On coming to know of the abovementioned facts, Smt. Jai Rani went to police station, Bindki for lodging F.I.R. with the police which, however, was not taken down by the police. She, therefore, sent an application per registered post to the Superintendent of Police, Fatehpur. The F.I.R. ultimately was registered at P.S. Bindki and the investigation followed as usual. The Petitioners felt aggrieved and, therefore, instituted this writ petition.

3. According to the Petitioners an original civil suit also was pending between the parties in the Court of Civil Judge, Fatehpur for cancellation of the aforesaid Wills dated 6.6.1994 and 9.6.1994. The original Wills were filed by them in the mutation proceedings and Smt. Jai Rani had filed certified copies thereof in the aforesaid civil suit.

4. It was contended for the Petitioners that in view of the provisions of Section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973 (Act 2 of 1974) the police had got no right to investigate the case on the basis of the aforesaid F.I.R. of Smt. Jai Rani that the police, however, was proceeding with the investigation, which for all practical purposes was of no use as the competent criminal Court could not take cognizance of the case on the basis of the charge-sheet, if any, submitted by the police against the Petitioners; that the original Wills having been filed in the mutation proceedings could not be available to the police and there was, thus, nothing to be investigated by it and that it was, therefore, expedient that the petition be admitted and during the pendency of the same, the police be restrained from proceeding further with the investigation. It was also contended that in any view of the matter, the arrest of the Petitioners may be stayed till the decision of the writ petition by this Court.

5. Learned standing Counsel, however, contended that the bar imposed by the aforesaid provisions of Section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973 (Act 2 of 1974) was against taking cognizance of the case by the concerned Court and not against the Police which in accordance with the provisions of the

said Code, was duty bound to investigate the case on the basis of the F.I.R. of Smt. Jai Rani and there being no bar against the investigation, it was not expedient to stay the same. It was further argued that no presumption could be drawn that after the completion of the investigation, the police necessarily shall submit charge-sheet against the Petitioners. It was possible that the Police may submit final report, in case it was found after investigation that no criminal case was made out against them. It was also contended by the learned standing Counsel that the remedy under Article 226 of the Constitution of India was an extraordinary remedy for which no cause of action as yet had arisen. The Petitioners, according to the learned standing Counsel, could raise objection before the concerned criminal Court against taking cognizance of the case in view of the aforesaid statutory provisions, in case the police submitted charge-sheet against them and they were entitled to come to this Court for invoking its extraordinary jurisdiction under Article 226 of the Constitution of India only if their objection was overruled by the said criminal Court. After carefully considering the aforesaid submissions and the case law relied upon by the learned Counsel for the parties, we are of opinion that no case was made out for interfering with the investigation by the police, as the aforesaid bar was against taking cognizance of the offences and not against the investigation.

6. During the arguments, reliance on behalf of the learned Counsel for the Petitioners was placed upon a few decisions of other High Courts in which it was generally held that the competent criminal Court could not take cognizance of the offences covered by Section 195(1) of the Code of Criminal Procedure unless the complaint was filed by the Court concerned or by some other Court to which that Court was subordinate. We, however, find that the said question of bar so far as the investigation was concerned was considered by this Court in its decision reported in 1986 ALJ 1535. *G.B. Gupta v. State of U.P.* and it was observed as follows:

Investigation by the police is not equated with cognizance taken by a Magistrate which is manifest also from the provision made in Section 190 where under cognizance may be taken either upon a police report or a complaint, as the case may be. Even though cognizance by the Magistrate may not be taken for offences referred to in Section 195(1)(b)(ii) except upon a complaint of the Court, this itself does not preclude the police officer from investigating and collecting evidence or material, if any during the course of investigation u/s 156 of the Code.

7. After giving our anxious consideration to the aforesaid question, we are of opinion that the correct legal position has been laid down by this Court in its aforesaid decision and observations to the contrary in the decisions given by the other High Courts, therefore, could not be given preference.

8. For the Petitioners, reliance was placed upon a Division Bench decision of this Court reported in *Vindhya Basini Prasad and Others Vs. State of U.P. and Another*, . But after going through it we find that the question relating to the bar

against the investigation was not at all considered by the Division Bench. For the first time, the accused persons had raised objection before the concerned criminal Court which had taken cognizance of the case on the basis of a charge-sheet submitted against them by Crime Branch. C.I.D. Under Sections 420, 465, 466, 467, 468, 471, 474, 120B, I.P.C. and Section 5(3) of Prevention of Corruption Act. The matter was pending before a Special Judge, who overruled the objection of the accused persons that the case was barred u/s 195, Code of Criminal Procedure and they preferred a revision application which was decided by the Division Bench and it was held that cognizance could not be taken by the learned Special Judge. This decision, however, is not an authority so far as the present controversy before this Court is concerned.

9. For the Petitioners, it was contended that there was no possibility of their conviction, as the competent criminal Court could not take cognizance of the case against them on the basis of the F.I.R. of Smt. Jai Rani and that it was, therefore, a fit case for quashing the F.I.R. including the investigation. Reliance was placed upon a decision of Hon"ble Supreme Court reported in (25) 1988 ACC 163, Madhav Rao Jiwaji Rao Scindia and Anr. v. Sambhaji Rao Chandroji Rao Angre and Ors. but after going through it we find that it was not an authority for the quashing of the investigation. The proceedings had commenced u/s 482, Code of Criminal Procedure after summons were, directed to be issued against Appellants Madhav Rao Jiwaji Rao Scindia and another by the Court of the Metropolitan Magistrate, 28th Court, Esplanade, Bombay, on 27th July, 1983 on the basis of a complaint filed by trustee Angre in the said Court. The Petitioners, therefore, did not derive any benefit from the said decision of the Hon"ble Supreme Court.

10. It was argued for the Petitioners that the investigation, even if allowed, would be meaningless, as the relevant documents were pending in the revenue and civil Court and, therefore, it would be proper that the same is quashed. The argument, however, appeared to be devoid of merits. The investigating officer, if he felt it necessary, could obtain the photographs of the relevant documents after obtaining permission for the same from the Court concerned and proceed further with the investigation. The thumb marks and signatures of the executant could be available to him from the office of the Sub-Registrar also, as the same at the time of the registration are obtained in the relevant register of the office. The investigation, thus, was not likely to be hampered for want of original documents. So far as the oral evidence was concerned, the investigating officer had got the right to interrogate the witnesses for which no permission was required from any Court. Due to this reason, therefore, the investigation cannot be quashed. This Court in the case of G.B. Gupta (supra) considered this submission also but found the same untenable. We also do not find any good reason to take a different view of the matter. It was also contended for the Petitioners that the decision of the Court concerned to file or not to file a criminal complaint against them was appealable as provided by Section 341, Code of Criminal Procedure and the informant Smt. Jai Rani, therefore, was not without

remedy. This submission was also considered and repelled by this Court in the aforesaid decision in the case of G.B. Gupta (supra), which observed as follows:

The existence of that provision does not derogate against the power or authority of the police ordinarily to arrest in the course of investigation, if a case for the same is otherwise made out or if that so becomes necessary. The provisions relied upon by the learned Counsel do not intermeddle in other words against the powers of the investigating agency. There is no exclusion of the power to investigate in such a case, in my view, even by necessary implication.

11. In our opinion, the provisions regarding the remedy by way of appeal come into play only after the Court concerned takes a decision to file or not to file a criminal complaint and the investigation due to the same, therefore, cannot be stayed or quashed.

12. This writ petition, in our opinion, is premature also, as the allegations have been made on the basis of suppositions only. May be that after investigation, no case is made out against the Petitioners and the police submits a final report. Even if charge-sheet is submitted, the Petitioners first should put their grievance so far as the question of taking cognizance was concerned, before the Court concerned and it does not appear proper that prior to the overruling of the objection, this Court should exercise the extraordinary jurisdiction under Article 226 of the Constitution of India on the basis of suppositions only. No case, thus, has been made out for admission of the petition, which is liable to be dismissed summarily.

13. In our opinion, the aforesaid bar against taking cognizance, as a matter of fact, is not there and the submissions in this regard put forward on behalf of the Petitioners are devoid of merits. This question has been considered by Hon''ble Supreme Court in a number of decisions after taking into consideration the amendment also in Section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973 (Act 2 of 1974) and it has been held that the bar could become operative only if the said offences were committed by a person after having become party to the proceedings pending before the Court. It was also held that the deletion of the words "by a party to any proceeding in any Court" did not make any difference so far as the application of the provision was concerned and it had only enlarged the scope of the provisions which could become applicable to scribes and the attesting witnesses also of a forged document. The Hon''ble Supreme Court in its decision reported in Mahadev Bapuji Mahajan (dead) and another Vs. State of Maharashtra, -considered the said question and held as follows:

Regarding the offences committed before the start of the proceedings, the High Court, in our view, has rightly held that no complaint is necessary by the Court concerned either in the old Code or in the new Code. Therefore, the contention that the absence of a complaint by the Revenue Court was a bar for taking cognizance by the Criminal Court in respect of these offences which were committed even before the start of the proceedings before the Revenue Court

cannot be sustained. The view taken by the High Court appears to be correct.

14. A Division Bench of the Punjab and Haryana High Court in its decision reported in *Karnail Singh and Another Vs. The State of Punjab*, , had considered the aforesaid question and after considering a few decisions of the Hon''ble Supreme Court held as follows:

To my mind the deletion of the words by a party to any proceeding in any Court'' in Section 195(1)(b)(ii) of the Code has only the effect of enlarging the protection envisaged by the section to the witnesses, scribes, attestors, etc. of the document with regard to which the offence has been committed. This class of persons would now be equally within the ambit of the provision irrespective of the fact whether they are parties to the proceedings or not. Apart from this. I am unable to read any other meaningful change brought in the law in this context...Consequently, the binding precedent applicable to the earlier provisions of Section 195(1)(c) of the old Code would be equally attracted in the case of the present provision subject to the marginal change noticed above.

15. The Hon''ble Supreme Court in its decision reported in AIR 1976 SC at page 2225, *Legal Remembrancer of Govt. of West Bengal v. Haridas Mundra*, considered the question of the applicability of the provisions of Section 195(1)(c) of the old Code, 1898, which for all practical purposes was the same as the provisions of Section 195(1)(b)(ii) of the new Code of Criminal Procedure, 1973 (Act 2 of 1974) as already observed by us and held as follows:

This Court pointed out that the words of Section 195(1)(c) clearly meant that the offence should be alleged to have been committed by the party to the proceeding in his character as such party, that is, after having become a party to the proceeding. Sections 195(1)(c), 476 and 476A read together indicated beyond doubt that the Legislature could not have, intended to extend the prohibition contained in Section 195(1)(c) to the offences mentioned therein when committed by a party to a proceeding prior to his becoming such party.

16. The Hon''ble Supreme Court, thus, restricted the scope and ambit of Section 195(1)(c) to cases where the offence was alleged to have been committed by a party to a proceeding after he had become such party and not before. After referring to its following two decisions, the Hon''ble Supreme Court further held that since the offence charged against the Respondent was one alleged to have been committed by him before he become a party to the proceeding in Matter No. 357 of 1957, Section 195(1)(c) had no application:

1. *Raghunath and Others Vs. State of U.P. and Others*, .

2. *Mohan Lal and Others Vs. The State of Rajasthan and Another*, .

17. The Division Bench of Punjab and Haryana High Court in the case of *Karnail Singh and Anr. v. The State of Punjab* (supra) also after considering the question at length observed in para 9 as follows:

On principles, also on the sound canons of construction, it is apt to confine Section 195(1)(b)(ii) of the Code to forgeries committed in respect of a document during its custody by the Court or its fabrication in the course of the proceedings itself".

18. The Punjab and Haryana High Court in its aforesaid decision finally held as follows:

To finally conclude it is held that the statutory power of the police to investigate cognizable offences under Sections 471, 475 or 476, I.P.C. is in no way barred by virtue of the provisions of Section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973.

19. We have already referred above to a very recent decision of the Hon'ble Supreme Court in the case of Mahadev Bapuji Mahajan (dead) v. State of Maharashtra (supra) wherein it has been held that absence of a complaint by the Court concerned was not a bar for taking cognizance by the criminal Court in respect of the offences which were committed even before the start of the proceedings before the concerned Court. We are, therefore, of opinion that the police in this case before us had got the right to proceed with the investigation of the case and submit charge-sheet, if a case was made out for the same, against the accused persons, as the bar of Section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973 (Act 2 of 1974) was not there.

20. Presuming for the sake of arguments that the bar in respect of the offences under Sections 467 and 468, I.P.C. was there, the police, in our opinion, was fully competent to investigate into the alleged offence u/s 420, I.P.C, as the same was beyond the scope of the said bar. For the Petitioners, however, it was contended that the facts of all the three alleged offences were common and, therefore, the police had got no right to proceed with the investigation for the offence u/s 420, I.P.C. After carefully considering the submissions, we are of opinion that the same was devoid of merits. The Hon'ble Supreme Court considered this controversy in its decision in the case of Legal Remembrancer of Government of West Bengal v. Haridas Mundra (supra) and held that the bar of Section 195(1)(c) of the old Code of Criminal Procedure, 1898 did not apply to the offences which were not covered by the said provision and the trial in respect of those offences was not vitiated. It would be useful to reproduce below the following principles of law laid down by the Hon'ble Supreme Court in this decision:

Obviously on its plain language, the inhibition in Section 195(1)(c) applies only where a person is being tried for an offence described in Section 463 or punishable u/s 471, 475 or Section 476. Here, the Respondent was being tried for three distinct offences under Sections. 418, 471 and 477A. So far as the offences under Sections 418 and 477A are concerned, they were plainly not covered by Section 195(1)(c) and even if Section 195(1)(c) were otherwise applicable, it is difficult to see how the trial of the Respondent for these two

offences could be said to be vitiated on the ground that no complaint in writing was made by the Company Judge. The High Court had, therefore, clearly and indubitably Jurisdiction to proceed with the trial against the Respondent in respect of the offences under Sections 418 and 477A.

21. It was, thus, evident that the Petitioner, if a case was made out, Could be tried for the offence u/s 420, I.P.C. as it was beyond the ambit of Section 195(1) (b)(ii) of the Code of Criminal Procedure, 1973 (Act 2 of 1974). The mere fact that the facts of the other two offences as well as the offence u/s 420, I.P.C. were common did not, in our opinion, justify the condonation of the offence u/s 420. I.P.C. We are not in know of any principle of criminal jurisprudence favouring condonation of an offence simply because due to certain technicalities, the trial of the same accused persons on the basis of the same facts for certain other offences was not possible. In any view of the matter, therefore, we are of opinion that the police was duty bound, in accordance with the relevant provisions of the Code of Criminal Procedure, 1973 (Act 2 of 1974) to investigate on the basis of the impugned F.I.R. for all the offences disclosed therein and submit charge-sheet against the Petitioners if the result of the investigation required the same.

22. The writ petition, being devoid of merits, therefore, is dismissed at the stage of admission.