
(1998) 05 AHC CK 0143

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 1260 of 1998

Smt. Jaswant Kaur and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-05-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 190(1), 195(1)
Penal Code, 1860 (IPC) — Section 120B, 219, 419, 420, 463

Citation : (1998) 2 ACR 1431

Hon'ble Judges : S.K. Phaujdar, J; J.C. Misra, J

Bench : Division Bench

Advocate : Jitendra Pal Singh, for the Appellant;

Judgement

S.K. Phaujdar and J.C. Misra, JJ.—The matter was heard on 5.5.1998.

2. The two Petitioners are sought to be prosecuted for an offence under Sections 219, 467, 468, 471, 420 and 120B, I.P.C., in Case Crime No. 2 of 1998, relating to P. S. Kotwali, District Pilibhit. There is a further prayer for quashing an order of the C.J.M. dated 8.1.1998, whereby he had given a direction u/s 156(3), Cr. P.C. for registration of a case on the basis of a complaint made to him by one Mahendra Singh against the present two Petitioners.

3. The facts of the case indicate that the complainant, Mahendra Singh, is very much alive but a certificate of his death was obtained by the present Petitioners and a paper said to be a will by Mahendra Singh was placed before the appropriate revenue authorities and on the basis of this certificate and the will, the properties of Mahendra Singh were mutated in the name of Petitioner No. 1.

4. A legal objection was taken by the Petitioners on the ground that Section 195(1)(b)(ii) was a bar to the entertainment of the application by the C.J.M. and registration of the F.I.R. as a case could have been initiated only upon a complaint by the concerned Court.

5. Section 195(1)(b)(ii), Cr. P.C., states that no Court shall take cognizance of

any offence described in Section 463 or punishable under Sections 471, 475 and 476, I.P.C., 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 except on the complaint in writing of that Court or of some other Court to which that Court is subordinate. Learned Counsel proposed to say that the alleged forged document certificate and will were produced before the tehsildar who was holding a revenue court and no cognizance could have been taken except upon the complaint in written of that Court. The learned Counsel placed before us a decision of the Supreme Court as reported in (XXXVI)1998 ACC 399. It was a criminal appeal heard by a two-Judge Bench of the Supreme Court against an order of the Punjab and Haryana High Court. The High Court had quashed an F.I.R. lodged against the Respondents alleging commission of offences under Sections 419, 420, 467 and 468, I.P.C., by them in course of the proceedings of a civil suit on the ground that Section 195(1)(b)(ii) of the Cr. P.C. prohibits entertainment of an investigation into the same by the police. The Supreme Court, however, observed that from a plain reading of the provisions, it was manifest that the bar under this section came into operation at the stage when the Court intended to take cognizance of an offence u/s 190(1), Cr. P.C. The Supreme Court, observed, that Section 195 had nothing to do with the statutory powers of the police to investigate into an F.I.R. which disclosed a cognizable offence even if the offence is alleged to have been committed in or in relation to any proceeding in Court. The statutory power of police to investigate under the Code was not in any way controlled or circumscribed by Section 195, Cr. P.C. It was another matter if after submission of charge-sheet, the Court would be competent to take cognizance in view of the embargo of Section 195(1), Cr. P.C. The Court, however, was of the view that nothing in Section 195, Cr. P.C. could be deemed to deter the Court from filing a complaint for the offence on the basis of the F.I.R. filed by the aggrieved party and the materials collected during investigation. The case law relied upon by the Petitioners, we are sorry to opine, goes against their own submission. The power of investigation by the police, as observed by the Supreme Court, is not circumscribed by the provisions of Section 195(1)(b)(ii), Cr. P.C.

6. The provision is an exception to the general power of a Court to take cognizance of an offence. It is the settled law that a criminal action may be initiated by any person who might not be the actual victim. This general power of cognizance has been limited by certain provisions like Section 195, Cr. P.C. and the Supreme Court had observed in its judgment, in JT 1998 (1) SC 419, that this restrictive provisions must be strictly construed and not liberally. It was also a case before the Supreme Court wherein the prosecution was initiated not upon the complaint of the Court before whom the alleged forged documents were submitted. It was held that the prosecution would not be barred u/s 195, Cr. P.C. as the forgery was allegedly committed in the documents prior to their being filed in the Court. In the instant case, one Mahendra Singh was shown dead by obtaining a certificate and a will was placed that was allegedly executed by

Mahendra Singh. The persons who presented these papers were close relations of Mahendra Singh who are expected to know whether Mahendra Singh was alive or dead. Now the complaint is being made by that Mahendra Singh himself that he was very much alive and the papers were forged, on the basis of which mutation was obtained.

7. In our view the Petitioners are not entitled to any relief by way of quashing the F.I.R. or by way of protection against arrest in view of the case-laws quoted above. The petition stands dismissed.