
(2007) 02 AHC CK 0191
In the Allahabad High Court

Sridhar Misra

APPELLANT

Vs

State of U.P. and Raj Narain

RESPONDENT

Date of Decision : 14-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195, 200, 202, 482
Penal Code, 1860 (IPC) — Section 419, 420, 467, 468

Citation : (2007) 3 ADJ 506

Hon'ble Judges : Barkat Ali Zaidi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Barkat Ali Zaidi, J.—Cheats and Tricksters have found a new way of grabbing property which is currently in vogue and that is to declare a liveman lad and appropriate his property after adopting such legal procedure as may be necessary and in respect of agricultural property getting entries made about the same in Revenue Records. This is what has happened in this case.

2. One Raj Narain of Village Bhelsi, Police Station Handia, District Allahabad, an issueless widower was declared dead by his brother and nephews and they got entries made in Revenue Records and consolidation proceedings on basis thereof. Poor Raj Narain cried hoarse that he is alive but none bothered and the applicant including the other four accused who are his brother and nephews all declared that he was no more alive.

3. Raj Narain, thereafter, filed an F.I.R. against the petitioners under Sections 419 420 467 and 468 I.P.C. The influence of the applicants prevailed and the police gave a final report mentioning that the question of the complainant Raj Narain being alive or dead was being dealt with by Revenue Courts and it was, therefore, not appropriate for the police to investigate the matter. The complainant Raj Narain gave a protest petition before the Magistrate which was accepted and the Magistrate summoned the applicant his brothers, three in number and the father.

4. It is against this order of summoning that the applicant has come to this Court u/s 482 Cr.P. C.

5. The arguments advanced in Court by the counsel for the applicant are three-fold;

(i) One of the arguments is that the Magistrate should have recorded statements u/s 200 Cr.P.C. before summoning the accused. That is the argument as contained in para-9 of the application. There is hardly any scope for controversy that after a final report has been filed, there is no occasion for recording statement u/s 200 Cr.P.C. as that is a procedure for complaint cases only and not for police investigated cases. If the Magistrate, however chooses to treat the protest petition as a complaint and so decides, it is only then the provisions of Section 200 and 202 Cr. P.C. will be attracted.

(ii) The other argument is that the case is one of Civil nature and should proceed in the Civil Court and not in Criminal Court. This argument is again unsustainable because if one tries to grab another man's property by falsely declaring him dead, he manifestly commits a crime for which he can be liable under criminal law. It would be an ingenious twist of law, to call it a case of civil nature. The Court will, however, examine at the time of framing charge as to what set on of the Indian Penal Code, if any, will be attracted to the case on the basis of facts and law. The counsel for the applicant has referred to the case of Ram Biraii Devi and Anr. v. Umesh Kumar Singh and Anr. 2006 (3) JIC 281 (S.C.). Where the case in question was held to be a case of civil nature, not triable by the criminal court, but it was on the facts of the particular case, that it was so held, and the case is not one of general application to all cases, and, in all circumstances. As mentioned above, the question is whether a living person has been falsely declared as dead, and that is clearly an offence, triable by the criminal court.

(iii) Last but not the least the argument was that orders about the complainant being dead and his property descending to his brother and nephew who are the applicants have been passed by different revenue courts and the decision of the courts can only be set aside by a Higher Tribunal and related to this was the contention that the prosecution of the applicant in criminal courts will, therefore, be barred by Section 195(1)(b) Cr.P.C. because the complaint about the same could be filed only by the concerned revenue courts. The arguments is unacceptable because it was at the behest of the accused that the court took a decision about the complainant Raj Narain being dead. The primary responsibility for the false and deceptive statement lies, therefore, on the accused, because, the accused chose to mislead the courts. The complainant Raj Narain contested the election of Pradhan in the village, about which papers are on record. Applicant Shridhar filed a Writ Petition in the High Court against respondent complainant Raj Narain and the copy of the same is on file. The said Raj Narain also appeared in Court before us and pleaded that he was alive in flesh and blood and still his brother and nephew were calling him dead. There is no evidence from the side of applicant how the said Raj Narain died and where he was

cremated. The applicant has not filed any photograph of deceased Raj Narain to show to the Court the real face of Raj Narain, whom, they call dead because at some stage in life, his photograph would have been taken.

6. This Court had earlier passed an order that the S.H.O. of the concerned police station should go along with the Patwari and verify whether Raj Narain was dead or alive! The report of the S.H.O. is on record to say that he is very much alive, though, he could not take the Patwari with him.

7. As regards the bar of Section 195(1)(b), it has to be noticed that it does not apply to Section 420 I.P.C. and even as regards the other sections to which it refers, it would not be applicable because it is not in relation to Court proceedings that the offence has been committed. The offence has been initially committed by the accused by falsely showing a live man as dead and they have misled the Courts and it is not, therefore, the court which has to file the complaint because the offence has been committed by the accused even before the commencement of revenue proceedings.

8. The offence committed by the accused calling a live man as dead is an independent offence and not one which will attract the bar of Section 195(1)(b).

9. Counsel for the applicant has referred to the following cases in relation to his arguments about the bar of Section 195(1)(b) Cr.P. C.

(i) Surjit Singh and Ors. v. Balbir Singh 1996 ACJ (32)

(ii) Sachida Nand Singh and Ors. v. State of Bihar and Ors. (36) 1992 A.C.C. 56.

(iii) Criminal Misc. Case No. 8000 of 1981 Narvadeshwar Tiwari v. State of U.P. and Anr. decided by this Hon"ble court on 27.10.1986.

(iv) Criminal Misc. Application No. 4035 of 1987 Pradohi Ram v. State of U.P., decided by this Hon"ble court on 17.8.1988.

But all these cases were dependent upon their facts and have no application to the facts of the present case, where, as held above, the offence is independent of court proceedings.

10. If courts fall prey to such curial machinations the bastion of justice and equity shall stand annihilated and the perpetrators of fraud and deception will have a field day. Live men should be called living and not dead.

11. It may, however, be mentioned as a measure of caution that the trial magistrate need not be influenced by the peripheral observations made in this order.

12. The Trial Magistrate will decide this case as expeditiously as possible and no date of more than a week shall normally be given in the case.

13. Petition dismissed.