

(2006) 11 SC CK 0059

In the Supreme Court Of India

Case No : Criminal Appeal 1136 of 2006 (Arising out of SLP (Criminal) No's. 2181-2211 of 2004)

State of A.P.

APPELLANT

Vs

V. Sarma Rao and Others Etc. Etc.

RESPONDENT

Date of Decision : 10-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2, 2(4)
Criminal Procedure Code, 1973 (CrPC) — Section 195, 340, 463, 471, 475
Land Acquisition Act, 1898 — Section 18, 23(1), 26, 53
Penal Code, 1860 (IPC) — S

Citation : (2007) 1 ACR 1052 : AIR 2007 SC 137 : (2007) CriLJ 289 : (2006) 9 JT 620 : (2007) 1 MLJ 784 : (2006) 11 SCALE 401 : (2007) 2 SCC 159 : (2006) 8 SCR 859 Supp

Hon'ble Judges : S. B. Sinha, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : Anoop G. Choudhary and D. Bharathi Reddy, for the Appellant; Annam D.N. Rao, Shiv Kimar Suri, Sibbo Sankar Mishra, G. Ramakrishna Prasad, Venkat Sunramaniam T.R. and B. Suyodhan, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—Leave granted.

2. Interpretation of the provisions of Section 340 of the Criminal Procedure Code is in question in this appeal which arises out of a judgment and order dated 27.9.2002 passed by a Division Bench of the Andhra Pradesh High Court, whereby and whereunder a complaint petition filed by the District & Sessions Judge, Vishakhapatnam in terms thereof was quashed.

3. The basic fact of the matter is not in dispute. Lands situated in Pisinikada village in the district of Vishakhapatnam were acquired by the State of Andhra Pradesh for providing house-sites to the weaker sections of society. Awards in respect of the said acquisition were made by the Land Acquisition Collector. Reference there against was made to the Civil Court at the instance of the

owners of the land. A large scale fraud, allegedly, took place in awarding compensation wherein the Sub-ordinate Judge, Anakapalle, his staff, the advocates of the claimants, the advocates appearing on behalf of the State and other officials were said to be involved. Upon obtaining requisite permission from the High Court, the CBCID registered a case and investigation there into was carried on. In its report dated 4.5.1998, the Additional Director General of Police, CID, Hyderabad indicated about a large scale conspiracy and fraud committed by the accused persons. Allegations made as against the accused came within the purview of the offences specified u/s 195 of the Criminal Procedure Code as a result thereof an inquiry u/s 340 thereof was imperative. The High Court got the matter examined by a Special Committee. It was opined that an inquiry may be conducted by District Judge, Vishakhapatnam. The report of the said Committee having been approved by the Full Court of the High Court, an inquiry was made by the District Judge, Vishakhapatnam. The learned District Judge examined a large number of witnesses and ultimately filed a complaint on 1.5.1999, pursuant to the findings recorded therein. An appeal came to be filed there against by respondents herein before the High Court, which was marked as Criminal Appeal No. 587 of 2000. A learned Single Judge of the High Court, in view of the importance of the question involved, referred the matter to a Division Bench by an order dated 31.10.2000.

4. A Division Bench of the High Court, by reason of the impugned judgment, allowed the appeal holding that the inquiry conducted by the District Judge was impermissible in law. It was directed:

In the light of what has been stated herein above, we set aside the order passed by the District Judge, but in the facts and circumstances of the case direct the Registrar to place the matter before the Hon'ble Chief Justice who may place the matter before an appropriate Bench for orders u/s 340 Cr.P.C. Decidedly the Court under Land Acquisition Act is a Court subordinate to the High Court as all appeals lie to the High Court. We would have ordered an enquiry u/s 340 Cr.P.C. by the Sub-Judge himself but as the matter had earlier been considered by two Judges of this Court though administratively and the report of such committee had been approved by the Full court, therefore, we direct that the matter be heard and decided by the High Court reminding ourselves with the old maxim that justice must not only be done but also seen to have been done.

The State is, thus, in appeal before us.

5. Mr. Anup G. Choudhary, learned Senior Counsel appearing on behalf of the appellant submitted that the High Court committed a manifest error in passing the impugned judgment in so far as it failed to take into consideration that Section 340 of the Criminal Procedure Code read with Section 195 thereof specifies the Courts being Civil, Criminal or Revenue, which are genus and, as the Land Acquisition Judge is governed by the provisions of the CPC in terms of Section 53 of the Land Acquisition Act, 1898, (for short, 'the Act'), thus, being subordinate to the District Judge, the statutory requirements in relation to filing

of Complaint Petition in terms of Section 340 of the Criminal Procedure Code stood fulfilled. The Constitution Bench decision of this Court in *Kuldip Singh Vs. The State of Punjab and Another*, Mr. Choudhary would submit, has wrongly been applied by the High Court in so far as it failed to notice the effect and purport of the term "ordinarily" in its proper perspective. Mr. Annam D.N. Rao, learned Counsel appearing on behalf of the respondents, on the other hand, urged that the Land Acquisition Judge being not a Court subordinate to the District Judge, the Complaint Petition at the instance of the latter was not maintainable.

6. Before we embark upon the issues raised before us, we may notice the relevant statutory provisions.

Land Acquisition Act was enacted to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition. It is a complete Code by itself. It defines "Court" to mean a Principal Civil Court of original jurisdiction, unless the Appropriate Government has appointed (as it is hereby empowered to do) a special judicial Officer within any specified local limits to perform the functions of the Court under the Act.

An Award is made under the Act by the Collector. Only when an awardee is dissatisfied with the Award, he may file an application before the Collector, in terms of Section 18 of the Act, whereupon a reference may be made to a court. Section 26 of the act reads as under:

26. Form of awards.--(1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of Sub-section (1) of Section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2, Clause (2) and Section 2, Clause (9), respectively, of the Code of Civil Procedure, 1908.

The Court, to which reference is made, is ordinarily a Principal Civil Court of original jurisdiction which would mean the District Judge. However, a forum may be created for reference of such disputes before a Special Judicial Officer within a specified local limit to perform the functions of the Court under the Act.

7. The Officer of the Court is, indisputably, a Judicial Officer. Despite applicability of the provisions of the CPC (C.P.C.) in relation to the proceedings pending before it, its substantive part is not applicable. A right of appeal is provided for u/s 96 of the Criminal Procedure Code. Such appeals are to be filed before the Forums laid down under the CPC or the courts governed by the statute. However, no appeal from a judgment of the Land Acquisition Judge can be filed before the principal court of civil jurisdiction or in other words, the District Judge of the

district, as such appeals lie only before the High Court. No appeal ex facie or filed against the order passed by the reference court is maintainable before the District Judge.

8. Section 195 of the Criminal Procedure Code provides for prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. The relevant provisions of Section 195 read as under:

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.--

(1) No Court shall take cognizance--

(a) (i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit, such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in Section 463, or punishable u/s 471, Section 475 or Section 476, of the said Code, 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, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in Sub-clause (i) or Sub-clause (ii),

except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) ?.

(3) In Clause (b) of Sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of Clause (b) of Sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary

original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that--

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

9. Section 340 of the Criminal Procedure Code reads as under:

340. Procedure in cases mentioned in Section 195.-- (1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in Clause (b) of Sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,--

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by Sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under Sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of Sub-section (4) of Section 195.

(3) A complaint made under this section shall be signed,--

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, "Court" has the same meaning as in Section 195.

In terms of a notification issued by the State, a reference was to be made to a subordinate Judge. "Would the said Court be the subordinate to the Court of District Judge?" is the core question.

10. In our opinion, it would not be. A Court of Subordinate Judge may be subordinate to District Judge for administrative purpose. He may be a court subordinate to it under the Code of Civil Procedure. But in relation to a proceeding under the Land Acquisition Act, it would not be. We have noticed that in terms of Section 53 of the Land Acquisition Act, the procedures laid down under the CPC would apply but the same is subject to the exceptions specified therein, viz., save in so far as they may be inconsistent with anything contained therein. Land Acquisition Act is a special statute. It provides for the forums both original and appellate. Section 2(4) of the Code of Civil Procedure, 1908 defines "district" to mean the local limits of the jurisdiction of a principal Civil Court of original jurisdiction, also known as District Court. It also includes local limits of the ordinary original civil jurisdiction of a High Court. Section 3 thereof provides hierarchy of the courts in the following terms:

3. Subordination of Courts.-- For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District court and every Court of Small Causes is subordinate to the High Court and District Court.

What is of significance is that the subordination of courts as specified therein is only for the purpose of the said Code and not for the purpose of a special Act, although the provisions thereof may be applicable to a case arising thereunder. Section 96 of the Code provides that an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court. The Court entitled to hear the appeals from a decree passed by a trial Court, therefore, must be authorized therefore. It is one thing to say that an appeal, depending upon the valuation, would lie before different forums, but if under the provisions of a special statute an appeal shall lie only before the High Court and to no other, the District Court would not be a court where an appeal would ordinarily lie from a judgment of the Land Acquisition Judge. Land Acquisition Act being self-contained code; in relation to the matters falling within the purview of the Land Acquisition Act, the Civil Courts would have no jurisdiction. {See Laxmi Chand and others Vs. Gram Panchayat, Kararia and others, .}

11. Emphasis laid by Mr. Choudhary on the word "ordinarily" occurring in Sub-section (4) of Section 195 of the Criminal Procedure Code is not of much importance. Sub-section (4) of Section 195 must be read with Sub-section (3) thereof. Sub-section (3) broadly divides the Courts into Civil, Revenue or Criminal as also a Tribunal constituted by or under a Central, Provincial or State Act. If a statute constitutes such Tribunal and declares it to be a Court for the purport of the said Section, Section 195 of the Criminal Procedure Code shall apply. It is, thus, the presiding officers of those forums only, which are specified

under Sub-section (3) of Section 195 of the Criminal Procedure Code, may file a complaint petition in relation to the offences punishable under the Sections specified in Clause (b) of Sub-section (1) of Section 195 of the Criminal Procedure Code. It is only for that purpose a legal fiction has been created, stating that the Court shall be deemed to be Subordinate to the Court to which appeals ordinarily lie. If an appeal exclusively lies to the High Court, the Court of Land Acquisition Judge shall be subordinate to the High Court and not the Principal Civil Court, although appeal may lie before the latter from the judgments and decrees passed by it in the suits which may be filed before it.

12. Section 195 of the Criminal Procedure Code does not recognise administrative discipline; it recognises judicial discipline with regard to the right of the higher authority to exercise appellate powers. The expression "ordinarily" may mean "normally", as has been held by this Court in *Kailash Chandra Vs. Union of India (UOI)*, and *Krishangopal v. Shri Prakashchandra and Ors.* (1974) 1 SCC 12 but, the said expression must be understood in the context in which it has been used. "Ordinarily" may not mean "solely" or "in the name", and thus, if under no circumstance an appeal would lie to the Principal District Judge, the Court would not be subordinate to it. When in a common parlance the expression "ordinarily" is used, there may be an option. There may be cases where an exception can be made out. It is never used in reference to a case where there is no exception. It never means "primarily". In *Kailash Chandra Vs. Union of India (UOI)*, it is stated:

This intention is made even more clear and beyond doubt by the use of the word "ordinarily". "Ordinarily" means in the large majority of cases but not invariably.

In *Krishangopal (supra)*, whereupon Mr. Choudhary has placed reliance, this Court was considering the provisions of Section 80-A of the Representation of People Act, 1951. In terms of the said provision, an election petition would be clearly entertainable by a Single Judge, but it was held that such jurisdiction could also be exercised by two or more judges.

13. The Constitution Bench decision of this Court in *Kuldip Singh (supra)* does not render much assistance in this case. The ratio laid down therein must be understood in the fact situation obtaining therein. In that case, an appeal was maintainable from the decree passed by the concerned Principal District Judge. We may briefly notice the fact of that matter: One Amar Singh filed a civil suit against one Kuldip Singh for recovery of a large sum of money on the basis of a mortgage in the Court of Subordinate Judge of First Class. The defendant filed a receipt which purportedly showed that Rs. 35,000/- had been paid towards satisfaction of the mortgage and in the witness box he had sworn that he had paid the money and had received the receipt. The Court held that the receipt did not appear to be a genuine document and that defendant's evidence was not true. Accordingly it passed a preliminary decree against the defendant for the full amount of the claim on 15-3-1950. Final decree followed on 15-7-1950. An appeal was taken to the High Court which was dismissed on 9-5-51. The High

Court also held that receipt was a suspicious document and the defendant's evidence was not reliable. The plaintiff thereafter moved an application before the trial Court asking that a complaint be filed against the defendant u/s 193 and 471 IPC. When the decree was passed the Court was presided by one Mr. Barlow. When the application was made for filing the complaint Mr. Barlow was transferred and Mr. Augustine was the Subordinate Judge. Before that application could be heard Mr. Augustine was also transferred and no Subordinate Judge of the First Class was appointed in his place. One Mr. K.K. Gujral, a Subordinate Judge of the Fourth class was sent to the area and was asked to decide the matter, but as he was only a Subordinate Judge of fourth Class he made a report to the District Judge that he had no jurisdiction because the offence had been committed in the Court of the Subordinate Judge of First Class. The District Judge then transferred the matter to the Senior Subordinate Judge Mr. Preetam Singh and he made a complaint which was subject matter of challenge before the Supreme Court. After Mr. Preetam Singh passed an order which was challenged in an appeal before the Additional District Judge Mr. J.N. Kapoor. The learned Judge held that the Senior Subordinate Judge Mr. Preetam Singh had no jurisdiction to make the complaint because he was not successor of Mr. Barlow. On merits it was held that there was no case. Thereupon, the matter went to the High Court in revision. The learned Judge at the High Court held that the Senior Subordinate Judge had jurisdiction and the material disclosed a prima facie case. Accordingly he set aside the Additional District Judge's order and restored the order of Senior Subordinate Judge making the complaint.

It was held:

Section 476 authorises the appropriate Court, after recording a finding that it is expedient in the interests of justice, etc., to, among other things, make a complaint in writing and forward it to a Magistrate of the first class having jurisdiction. That was done by Mr. Pitam Singh. So the only question we have to decide on this part of the case is whether the Court of the Senior Subordinate Judge over which Mr. Pitam Singh presided was the Court to which the Court of Mr. Barlow was subordinate within the meaning of Section 195(3).

Now it is to be noticed that subordination has been given a special meaning in this section. It is not any superior Court that has jurisdiction, nor yet the Court to which the "former Court" is subordinate for, what might be termed, most general purposes, but only the Court to which it is subordinate within the meaning of Section 195(3).

14. Meaning of expression "ordinarily" was considered in the aforementioned fact situation. This Court rejected the view that "ordinarily" would mean "the majority of the cases". It was opined:

In determining the Court or Courts to which an appeal will ordinarily lie, we have to see which Court or Courts entertain appeals from that class of tribunal in the ordinary way apart from special notifications or laws that lift the matter out of

the general class. Our meaning will be clearer when we turn to the case in hand and examine the Punjab Courts Act of 1918.

The opinion of the Constitution Bench of this Court was expressed as appeals from its various decrees and orders lie to different Courts and thus, the question as regards interpretation of the terms arose in the fact situation obtaining therein where for this Court had to consider to which of them the appeal would ordinarily lie. In that case, this Court was considering the provisions of the Punjab Courts Act, 1918 and categorically held that the law laid down therein was confined to the said Act.

15. In the State of Andhra Pradesh there is no such statute. The expression "genus" used by this Court was kept limited to the extent of nature of the proceedings, i.e., whether Civil, Criminal or Revenue. This Court had no occasion to determine the question with reference to a special statute like the Land Acquisition Act. The Civil Courts exercise their jurisdiction not only in respect of a suit filed before it, they do so under various special statutes. The hierarchy of the Courts for the purpose of Section 195 of the Criminal Procedure Code, therefore, will have to be determined, having regard to the nature of the proceedings and the statutes under which the same is required to be determined. We may immediately notice that the Act makes a distinction between filing a complaint by a public servant and a court. Whereas Clause (a) of Sub-section (1) of Section 195 contemplates administrative subordination, Clause (b) contemplates judicial subordination. Each expression used in the Code, therefore, must be understood upon reading the provisions thereof in their entirety and not in isolation.

16. In view of the facts and circumstances of this case, we are, therefore, of the opinion that the Division Bench of the High Court cannot be said to have committed any error in passing the impugned judgment. The appeal is dismissed accordingly. However, keeping in view the fact that the matter is pending for long time, we would request the High Court to consider the desirability of implementing the decision of the Division Bench as expeditiously as possible. However, in the facts and circumstances of this case, there shall be no order as to costs.