

(1954) 05 GAU CK 0011
In the Gauhati High Court

U Mistir Wallang Nongseh

APPELLANT

Vs

Ka Ephreban Wallang Nongseh

RESPONDENT

Date of Decision : 25-05-1954

Acts Referred:

Penal Code, 1860 (IPC) — Section 193, 404, 408, 424

Citation : AIR 1954 Guw 259 : (1954) CriLJ 1838

Hon'ble Judges : Ram Labhaya, J; Haliram Deka, J

Bench : Division Bench

Judgement

Ram Labhaya, J.—This petition of revision arises out of a complaint case No. 20/ S.T. of 1951. The petitioner, U Mistir Wallang Nongseh, was the accused.. The complaint against him was that he had been guilty of offences under Sections 193, 404, 408 and 424, I. P. C.

The case stated in the complaint was that one U Rang Myllung was living at Lynkhoi for about twenty years. He was a rich man and a moneylender by profession. He was" murdered. As U Rang Myllung became blind in his old age some years before his death, U Mistir Wallang accused was employed by him to look after his money-lending business. At the time of his death, the accused had in his possession considerable movable property in the shape of money and valuable documents belonging to the deceased. After his death, the accused claimed title to the property left by the deceased and began misappropriating gold ornaments and money which he was realising from the debtors.

The complainant, Ka Ephrebon Wallang, claimed that she was the sole heir of the deceased. She had asked the accused to hand over all properties belonging to the deceased to her. But the accused did not comply with the request. She had then applied to the Deputy Commissioner, Khasi and Jaintia Hills and the Additional Deputy Commissioner for obtaining a declaration from the accused about the property that remained with him on the death of U Rang Myllung. She also prayed that bonds and other property in his possession be surrendered. The accused filed a list of the names of the debtors which was not complete. It was

averred that the accused was concealing the names of some debtors and did not make a full and true disclosure of all the assets belonging to the deceased.

2. The petitioner before us who was the accused in the court below has stated in his affidavit that Ka Don had one daughter. Petitioner was her son. She was the nearest relative of the deceased U Rang Myllung, His mother left no daughter. Ka Don succeeded to the property. U Rang Myllung managed the property of the late Ka Don and on her death, Ka Tyrep, her daughter. During the life-time of U Rang Myllung, he and the said Ka Don jointly transferred some land. After Ka Don's death, Ka Tyrep and U Rang Myllung also transferred some land. Ka Ephrebon Wallang, the complainant was the wife of a Sub-Inspector of Police. She had no house or land within Nongkhlaw State. The complainant was not in any way related to U Rang Myllung, the deceased. According to the petitioner, Ka Tyrep now is exclusively entitled to the property and complainant has no right or title in it.

It is admitted by the petitioner that in a miscellaneous proceeding No. 150(S) of 1950, he was called upon by the Deputy Commissioner, Khasi and Jaintia Hills, to put in a declaration containing details of the property left by U Rang Myllung. He complied with the order. Notwithstanding this, the complaint had been filed against him which had remained pending now for about three years.

3. It has been undoubtedly a very long drawn litigation. By this time, the evidence of the complainant has all been recorded. The learned trial Magistrate has also framed the charge in the case. The charge is with three heads.

Under the first head, the accused has been charged for intentionally giving false evidence by giving an incomplete list of bonds in favour of U Rang Myllung, Under the second head, he has been charged for misappropriating or converting to his own use certain property, loan deeds, cash and money knowing that such property was in the possession of late U Rang Myllung at the time of his death and had not been since in the possession of any person legally entitled to such possession. Under the third head of the charge, he has been accused of dishonestly concealing or removing certain property - loan deeds, money etc, belonging to U Rang Myllung and dishonestly releasing certain sum - Rs. 200/- said to have been realised which was due from Ka Dorman.

Apart from this, the second and the third heads of charge did not specifically mention any property coming to the possession of the petitioner (accused) which he may have misappropriated or disposed of dishonestly. These heads of charge under Sections 404 and 424 therefore are extremely vague and indefinite and cannot conceivably be answered except in regard to an item of Rs, 200/- only.

4. The case for the respondent (complainant) is that she is the heir of the deceased, U Rang Myllung. This claim is disputed. The position of the accused is that the property did not belong to U Rang Myllung. There is thus a serious dispute about the right of succession. The question involves an enquiry into not only facts but possibly the custom applicable to the parties. This obviously is a

matter which is more appropriate for decision by a Civil Court.

But this really is not the only or even the main question. The second part of the case is even more important. The complainant has to establish after showing that she is the heir to the deceased that property belonging to the deceased was in the hands of the petitioner and that he misappropriated it or has dishonestly disposed it of. This involves a very elaborate and complicated enquiry. The assets of the deceased have to be ascertained. If the matter were in the Civil Court, a commission may have been appointed. Appointment of receiver also may have been considered necessary. Even the Civil Court would have taken some time to dispose of the matter. The Criminal Court is not a proper forum for deciding disputes about succession and also for enquiry into the assets left by a deceased. These are complicated matters. The dispute in the case therefore is essentially of a civil nature. The Criminal Courts have to be on their guard to see that their processes are not abused for obtaining decisions of complicated matters of a civil nature or for putting pressure on parties with a view to obtaining settlement of disputed questions,

5. In regard to the offence u/s 193, it may be observed that the declaration filed by the petitioner in the miscellaneous proceeding, does not seem to attract the applicability of Section 193. It is only when a person is legally bound by an oath or by an express provision of law to state the truth or being bound by law to make a declaration upon any subject makes any statement which is false and which he knows or believes to be false or does not believe to be true that he is said to give false evidence. It has not yet been shown to us that the statement containing a list of deeds of loans which the petitioner supplied under the order of the Deputy Commissioner amounted to a declaration which he was bound by law to make. So long as this condition is not satisfied, the charge u/s 193, I. P. C., cannot succeed.

6. The complainant cannot get the necessary relief from the Criminal Court. Even if she is the heir as alleged by her and even if there were assets left in the hands of the accused, she will have to go to the Civil Court for obtaining necessary relief. The Criminal Court cannot help her in recovering property if she is found entitled to it. In these circumstances, it appears that the complainant has started from the wrong end. She should have gone to the Civil Court to establish her title as an heir to U Rang Myllung and also what, if any, property was left by him. The Civil Court could embark on an enquiry into the assets of the deceased and also if there was any, misappropriation. After the decision of the civil case, it would be appropriate for the complainant to go to the Criminal Court if the proceedings in the Civil Court disclosed that any offence or offences had been committed.

7. Normally, this Court is very reluctant to interfere in a pending case which has reached the charge stage. But circumstances of this case are exceptional. It appears that no useful purpose could be served by allowing this trial to continue, particularly in view of the charges that have been framed, The complaint and the proceedings taken in the case therefore are quashed but as this complaint is not

being disposed of on the merits, the complainant shall be at liberty to prosecute the accused if after she has established her claim in the civil court it is found that the accused has been guilty of any offence. The petition is allowed and the rule made absolute.

Deka, J.

8. I agree.