

Bindeshwar Roy Vs. the State of Bihar and anr.

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Court : Patna

Decided On : Nov-03-1998

Judge : S.N. Jha, J.

Appeal No. : Criminal Revision No. 291 of 1998

Appellant : Bindeshwar Roy

Respondent : The State of Bihar and anr.

Advocate for Pet/Ap. : Mr. Gupta

Disposition : Petition Allowed

Judgement :

S.N. Jha, J.

1. The Sessions Judge has set aside the order of the Magistrate taking cognizance of the offences under Sections 420 and 468 of the Indian Penal Code against opposite party No. 2. The complainant-petitioner has come to this Court in revision.

2. The Sessions Judge has taken the view that since the complaint relates to filing of a forged document punishable under Section 468 of the Indian Penal Code, an offence described in Section 195(1)(b)(ii) Cr.P.C. in view of the provisions of Section 195, private complaint was not maintainable. He has also observed that

the document on the basis of which the complainant claims his right and interest has not been brought on record. None of the two grounds is tenable.

3. Mr. S.K. Katriar, learned Counsel for opposite party No. 2 in support of the proposition that private complaint was not maintainable placed reliance on *Gopalkrishna Menon v. D. Raja Reddy* : [1983]3SCR836 . Mr. Gupta learned Counsel for the petitioner submitted that the said decision has been noticed and explained by the Supreme Court in *Sachida Nand Singh and Anr. v. State of Bihar and Anr.* : 1998 CriLJ1565 , and it has been held in no uncertain terms that a private complaint can be said to be not maintainable only if the offence is committed while the document is in custody of the Court. Mr. Katriar agreed that the decisions seems to support the contention of the petitioner. While dealing with the point at issue, their Lordships have observed.

It would be a strained thinking that any offence involving forgery of document if committed for outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the Court records.

The Court, it would appear, expressed reservations as to the correctness of certain observations made in *Gopalkrishna Menon (supra)*, pointing out that the point which arose for consideration in that case was whether the offences under Sections 461 and 471 of the Penal Code are also offences described in Section 463 of the Penal Code falling within the ambit of Section 195(1)(b)(ii) Cr.P.C. The Court followed its earlier decision in *Patel Lalji Bhai Somabha v. The State of Gujarat* : 1971 CriLJ1437 . In view of the decision in the case of *Sachida Nand Singh v. State of Bihar* rendered by a Bench of three Judges, the decision in the case of *Gopalkrishna Menon v. D. Raja Reddy* rendered by two-Judges can be of no avail to the opposite party.

4. As regards the other ground assigned by the Sessions Judge that the documents have not been produced by the complainant, I may observe that this is a matter which pertains to the defence in the case. It is needless to emphasise that if a document, which is the basis of the claim is not produced, that Will be to the determent of the party and in that case the Court Will be free to draw its

inferences and conclusions. Moreso, in a criminal case where the prosecution has to make out a fool proof case. Besides, it is open to the accused to adduce evidence of his own in defence.

5. Mr. Katriar sought to contend that the dispute involved in the criminal case is of civil nature and, therefore, the trial of the accused opposite party Will be an abuse of process of law. I express no opinion on the point, for the point does not seem to have been argued before the Court below. It is open to the opposite party to raise the point and/or such other points as may be available to him at the appropriate stage of the trial in accordance with law.

6. With these observations, the order of the Sessions Judge dated 4/5- 398 is set aside and this revision is allowed.

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