

Vishnu Kumar and ors. Vs. State of Andhra Pradesh and anr.

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Court : Andhra Pradesh

Decided On : Jul-08-1980

Reported in : 1980CriLJ1361

Judge : Muktadar, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 167, 463, 468 and 471;
[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 195(1)

Appeal No. : Criminal Misc. Petn. No. 987 of 1980

Appellant : Vishnu Kumar and ors.

Respondent : State of Andhra Pradesh and anr.

Advocate for Def. : C. Padmanabha Reddy, Adv. and ;Public Prosecutor

Advocate for Pet/Ap. : K. Somakonda Reddy, Adv.

Judgement :

ORDER

1. This is a petition to quash the proceedings in C.C. No. 341 of 1979 on the file of the Court of the V Metropolitan Magistrate, Hyderabad.

2. A private complaint was filed before the V Metropolitan Magistrate Hyderabad. It was sent for investigation under S. 156(3) of the Cr.P.C. The Station House Officer, Nampally Police Station, after due investigation, filed the charge-sheet

against the accused for offences punishable under sections 120-B, 468 and 471 of the I.P.C.

3. The case of the prosecution is that the complainant is the owner of the shops bearing municipal Nos. 5-7-568 to 5-7-575, situated at Nampally, Hyderabad and that A-3 and A-4 are the tenants. A-1 is the son of A-2. They have cloth business opposite to the shop of the owner i.e. the complainant. The complainant wanted to sell the shops as he was getting very low rent and he made this known to some of the accused. Therefore, A-3 and A-4 were afraid that the shops would be purchased by somebody else and A-3 and A-4 would be asked to vacate these shops. Therefore, A-1 and A-2 with the evil intention of getting the shop for a negligible price' conspired with A-3 and A-4 and fabricated a document by using a revenue stamp containing the signature of the complainant in the Rokad of A-1 and also brought into existence a forged receipt for a sum of Rs. 10,000/-. On the basis of this document, A-1 filed a suit for specific performance of the agreement of sale. On the basis of the above facts mentioned in the charge-sheet, the learned Magistrate took cognizance of the offences punishable under Sections 120-B, 468 and 471 I.P.C.

4. In this petition Mr. Somakonda Reddy, the learned advocate, strenuously contends that having regard to the provisions of S. 195(1)(b)(ii) of the Cr.P.C. the private complainant of the SHO, Nampally Police Station, cannot file the charge-sheet. If at all, a complaint would be filed in writing by the court before which the civil suit for specific performance of the agreement of sale on the basis of the alleged forged document is pending. The learned advocate further submits that although the offence punishable under S. 468 I.P.C., is not specifically mentioned in S. 195(1)(b)(ii), Cr.P.C. nevertheless, having regard to the opening phrase 'of any offence described in S. 463' found in Clause (ii) of Section 195(1)(b) Cr.P.C., the offence punishable under S. 468 I.P.C. would also come within the category of the offence described in S. 463. So far as Section 120-B, I.P.C. is concerned, Mr. Somakonda Reddy states that S. 195(1)(b)(ii) Cr.P.C. specifically provides for that offence. Therefore, submits the learned advocate that so far as these offences are concerned, the trial court has taken cognizance of the offence punishable under Sections 120-B, 468 and 471 I.P.C., on the basis of the charge-sheet filed by the

police, whereas all these three Sections are found in S. 195(1)(b) (ii) and (iii) Cr.P.C. and, therefore, since the prosecution has not been laid on the basis of a complaint in writing by the civil court before which the alleged document is pending decision, the proceedings are liable to be quashed.

5. Mr. Padmanabha Reddy, the learned advocate appearing on behalf of the private complainant, contends that a perusal of S. 195(1)(b)(ii) Cr.P.C. would show that only those offences which are described in S. 463 I.P.C., and mentioned specifically as punishable under Sections 471, 475 or S. 476 are the only offences for which the court can take cognizance of on the basis of the complaint in writing of that court before which the civil suit is pending. Therefore, since Sections 468, 120-B read with 468 are involved in this case, with regard to which S. 195(1)(b)(ii) Cr.P.C., is completely silent, the trial court was correct in taking cognizance of the offence punishable under sections 120-B and 468. So far as Section 471 is concerned, Mr. Padmanabha Reddy contends that, Section 471 as mentioned in sub-clause (ii) of S. 195(1)(b) only applies to the parties to the document and to no other person. Hence, he submits that the proceedings should not be quashed. In support of his contention, Mr. Padmanabha Reddy has cited : Govind Mehta v. State of Bihar. : 1971 CriLJ1266 and Yellappa Gowder v. State of Karnataka, 1977 Mad LJ (Cri) 20 : (1977 Cri LJ NOC 154) (Kant).

6. Mr. Somakonda Reddy has cited the following rulings : Assistant Sessions Judge, North, Arcot v. Ramammal, (1913) ILR 36 Mad 387 : (13 Cri LJ 85); Montajaddin v. Emporor, AIR 1938 Cal 481 : (34 Cri LJ 526) and Dena Nath v. Hansraj, 1974 Cri LJ 198 (J and K).

7. I am of the opinion, having regard to the circumstances of the case and the provisions of law involved, that the contention advanced by Mr. Somakonda Reddy has to be accepted.

8. In this case, we are not concerned with Section 195(1)(a), but are concerned with S. 195(1)(b)(ii) and (iii), which provides as follows :-

'195(1). No Court shall take cognizance - (b)(ii) of any offence described in S. 463, or punishable under S. 471, S, 475 or S. 476, of the said Code, when such an

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 of some other Court to which that Court is subordinate.'

A plain reading of this Section would show that for offences mentioned in clause (b)(ii) and (iii) of S. 195(1), Cr.P.C. the Court can take cognizance of those offences only when the complaint is in writing filed by the Court or some other Court to which that court is subordinate, before which the document in question is found to be forged one and the accused before that Court are found to have committed any offence. In the instant case, on the basis of the alleged forged document, the accused have filed a suit in the civil court. Therefore, it would be the civil court which would be the proper complainant in this case and not a private individual or the police. As pointed out above, the trial court has taken, cognizance of the offence punishable under Ss. 120-B, 468 and 471 I.P.C. S. 195(1)(b)(iii) applies to S. 120-B, I.P.C. specifically and similarly S. 195(1)(b)(ii) also includes specifically the offence punishable under S. 471, I.P.C. Therefore, so far as these offences are concerned, taking cognizance by the Court is hit by the provisions of S. 195(1)(b) (ii) and (iii) Cr.P.C.

The main dispute centres round S. 468 I.P.C. which is being attracted in respect of commission of offence of forgery for the purpose of cheating. Mr. Padmanabha Reddy contends that, having regard to the phrase 'of any offence described in Section 463' only those offences of forgery simpliciter as mentioned in Section 463 I.P.C., will be hit by the provisions of S. 195(1)(b)(ii) Cr.P.C. and not offences punishable under S. 468, I.P.C., because S. 468 has not specifically been mentioned in sub-clause (ii) or Clause (b) of Section 195(1) Cr.P.C. In support of this contention Mr. Padmanabha Reddy relied on a ruling of the Supreme Court reported in *Govind Mehta v. State of Bihar*, (1971 Cri LJ 1266) (supra). It is true that I am bound by the ruling of the Supreme Court. But, in order to be bound, it is necessary that the Supreme Court had applied its mind and had considered the provisions of law, and had given a considered opinion on that point of law. But,

where the Supreme Court decides a case on the basis of a concession or admission made by an advocate on behalf of a party, then, in that case, the effect of such a decision would not be so potent as one based on a consideration of a question of law involved. It is to be noted that in Govind Mehta's case, the Supreme Court has held in paragraph 14 as follows :-

'We have already referred to the Sections of the Penal Code under which the appellant has been charged. They are Sections 167, 466 and 471. Admittedly, none of these sections is covered by Clause (b) of S. 195(1). Therefore, Clause (b) prima facie will not in terms bar the jurisdiction of the Magistrate to take cognizance of the offence under S. 167 of the Penal Code.' In para. 15, the Supreme Court held : 'The offence under S, 466 of the Penal Code, is, admittedly, not covered by clause (b) or Clause (c) of S. 195(1) of the Code. Therefore, that Section does not operate as a bar in respect of this offence.'

It would be noticed that the decision in this case was on the basis of an admission made by the counsel and not on a consideration of the provisions of S. 195(1)(b)(ii) and specifically the phrase appearing in sub-clause (ii) viz., 'of any offence described in S. 463'. I am of the opinion that S. 463 defines a forgery simpliciter whereas the following Sections i.e., Sections 465, 466, 467, 468, 469, 470 and 471 define an aggravated form of forgery. Hence, to my mind, the Supreme Court ruling does not help the respondent in this case; and in the light of the phrase 'of any offence described in S. 463' Section 468 also will be hit by the provisions of S. 195(1)(b)(ii) of the Code of Criminal Procedure. I am supported in my view by a judgment of the Jammu and Kashmir High Court in Dena Nath v. Hansraj, (1974 Cri LJ 198) (supra).

9. So far as the offence punishable under Section 471 is concerned, the phrase 'by a party to any proceedings in any Court', appearing in S. 195(1)(c) of the old Cr.P.C., is not to be found in the new Cr.P.C. and instead, the words 'when such an offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court', now appear. Therefore, in the light of this amendment, the contention advanced by Mr. Padmanabha Reddy in respect of S. 471 cannot be accepted.

10. Hence, to my mind, the proceedings in C.C. 341 of 1979 on the file of the Court of the V Metropolitan Magistrate, Hyderabad are liable to be quashed are hereby quashed. Petition allowed.

11. Petition allowed.

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