

Vindhya Basini Prasad and ors. Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : May-24-1982

Reported in : 1982CriLJ2177

Judge : V.N. Misra, J.

Appellant : Vindhya Basini Prasad and ors.

Respondent : State of U.P. and anr.

Judgement :

ORDER

V.N. Misra, J.

1. This is an application by Vindhya Basini Prasad and 14 others against the order dated 2-11-1979 of Sri S. S. Gupta, IV Additional Sessions Judge (Special Judge) Varanasi in Criminal Case No. 1 of 1977 in which he rejected the application 56 Kha and held that the suit was not barred by Section 195(1)(b), Cr. P.C.

2. The facts involved in this case may be briefly stated. Bindeshwari was the only son of one Ram Karan, who had five other daughters. Ram Karan executed a registered will on 3-4-1961 in favour of Bindeshwari in respect of his property. After the death of Ram Karan on 26-10-1961 the name of Bindeshwari was mutated on his property and also in consolidation proceedings which started in 1964 and chaks were allotted to him and some of the agricultural plots in village

Dhanpur and Dhanpatti allotted to him were also sold by him. In 1969 Bindeshwari died leaving behind his pregnant widow Smt. Sushila Devi as his sole heir, It was alleged that after the death of Bindeshwari Shitla Prasad, brother-in-law of Bindeshwari and Bmdhyawasini Tewari real brother of Jwala Prasad, husband of Smt. Sushila, another sister of Bindeshwari in collusion with Virendra Bahadur Srivastava and Shiv Kumar Singh and, the then A. C.O. of the area and other persons entered into a criminal conspiracy and forged and fabricated six consolidation cases by illegal and corrupt means on the basis of a forged and unregistered will dated 15-10-1961 purported to have been executed by Ram Karan in favour of his son, four daughters, excluding Chamela, and his wife, showing these cases instituted in the year 1965 and their being compromised by the deceased Bindeshwari Prasad himself in that year. It was alleged that actually there were no such cases, there was no will in favour of the daughters and no compromise was ever arrived at between these people and Bindeshwari. On the basis of this compromise decree in 1965 the names of these four daughters of Ram Karan, Bindeshwari and his widow were mutated Over his land, After mutation was done Smt. Sushila Devi, the widow of Bindeshwari moved an application on 1-7-1970 to the S. D. M, Gyanpur and pointed out that these documents were forged and requested the S.D.M. to hold an inquiry into the matter. The S.D.M. referred the matter to Crime Branch, C. I. D. and a F.I.R. was also recorded against the accused persons on 24-9-1971 under Sections 420/465/466/467/468/471/474 and 120-B, I.P.C. and Section 5(3-A) of the Prevention of Corruption Act, In the case registered against these persons the C. I. D. submitted a chargesheet against them, on which requisite sanction under Section 6 Prevention of Corruption Act, was obtained under Section 197, Cr. P. C against the two Consolidation Officers and then this case proceeded against these persons. After this case proceeded the applicants made an application (56 Kha) in which they contended that the case was barred under Section 195(1)(b) Cr. P. C and this application was rejected by the learned Special Judge. It is against this order that the present revision has been filed in this Court.

3. The first point raised by the learned Counsel for the O. Ps. was that it was on the application of Sushila Devi, widow of Bindeshari, that the S.D.M., Gyanpur took cognizance of this case and sent this case to C. B., C. I. D. for inquiry, and

the case started when the C. I. D. submitted a charge-sheet in it. Then again, when the case started like this it was urged that it would be deemed to be a complaint by the S.D.M. and the S.D.M. who is a senior revenue official and is next only to the D. M. who is Director of Consolidation, therefore, this will be deemed to be case properly constituted in spite of the bar of Section 195(1)(b), Cr. P.C., because this case was filed by a court which was superior to the court of C.O. From Section 195, Cr. P.C. however, it would seem that a superior court is the court to which an appeal ordinarily lies from the court in which forgery was committed and Clause (a) of Section 195(4) of the Code further shows that 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. In this case, therefore, the appeals from the judgment of the C.O. lay to the S.O.C. and, therefore, he was the court to which the court of C.O. was subordinate and under Section 195, the complaint could either be filed by the C.O. or by the S.O.C. and not the S.D.M. Therefore, even if the initiation of this case on the S.D.M. asking for a report from C. B., C-1. D, was not barred he could not file this complaint because the court of C.O. was subordinate to the S.O.C. and not to him and, therefore, the complaint had to be filed either by the C.O. or the S.O.C. and not the S.D.M. Then, the court of S.D.M. was not a consolidation court because consolidation courts are created under the Consolidation of Holdings Act and Assistant Director (Consolidation) is appointed under Section 42 of the Act and there is nothing to say that the S.D.M. was so appointed Assistant Director (Consolidation) and was a Consolidation Officer, This complaint, therefore, even if it was filed by the S. D, M. was not properly filed and these proceedings were not properly initiated.

4. It was then contended that in this case forgery was not committed during the proceedings in the court and it was urged that the bar of Section 195(1)(b)(ii) would only be applicable when the offence is committed while proceedings are pending and because this offence was not committed while the proceedings were pending, therefore, there was no bar of this section, Section 195(1)(b)(ii) of the Code only says that when an offence has been committed in respect of a document produced or given in evidence in a proceeding in any court then the bar of Section 195 of the Code shall not apply and no cognizance of the offence shall

be taken except on the complaint in writing of that court. Therefore, whether the proceedings were pending or not since these documents were produced in court, therefore, the bar of Section 195 would be there. It was also held in *Vivekanand Nand Kishore v. State* : AIR1969 All189 that for the bar of Section 195(1)(c) it is immaterial whether forgery is committed prior or subsequent to the institution of the said proceedings, For his reason, therefore, whether the foregery was committed while the proceedings were pending or not is wholly immaterial.

5. It was then urged that in this case complaint could not be filed by the C.O. because he was also involved in this case and because the complaint could not be filed by him, therefore, his superior court, the S.O.C., could also not have filed this case and the provisions of Section 195(1)(b) were inapplicable to a case like this and it was for this reason that the earlier petition under Section 482, Cr. P.C. was dismissed. The earlier petition under Section 482 was rejected at the admission stage as not pressed and not on the ground that the C.O. and S.O.C. could not file such complaint, In this case the learned Counsel for the opposite parties relied on *Trilok Chand v. State* : AIR1959 All512 in which it was held that the provisions requiring a superior court to make a complaint is applicable in those cases only in which the inferior court has the power and can be expected to make a complaint. On the basis of this decision it was urged that in this case neither the C.O. nor the S.O.C could file a complaint in respect of this forgery and the provisions of Section 195 were not applicable to it. In this case, perhaps it would have been very embarrassing for the C.O. to file a complaint against his predecessor the earlier C.O., but there was no reason why a complaint could not be filed by a court to which the Court of C.O. was subordinate and why the S. O. C could not file this complaint.

6. Learned counsel for the opposite party also argued that Section 195, Cr. P.C. was not applicable because the bar contained in this section was only on a private complaint, and not in a case like this initiated on police report. Section 195, Cr. P.C., was, however, never interpreted in these terms, because this section merely says that when the document is produced or given in evidence in any court no Court shall take cognizance of the offence committed in respect of such document except on the complaint in writing of that Court or its superior court.

7. Then, it was urged that when Ram Karan died the name of Bindeshwari his only son was mutated and the daughters of Ram Karan filed no objection to it. Then, in 1964 consolidation proceedings started and continued till 1968. In 1968 chaks were made in respect of the property of Ram Karan only in the name of Bindeshwari, but then too the daughters of Ram Karan filed no objection and did not contend that under any will in their favour they too had a share in the property. Then, the will said to be forged was executed on 15-10-1961 only eleven days before Ram Karan died. These things may show that the will for these reasons relied upon by the daughters of Ram Karan was forged, but the consolidation courts would see it and if it comes to the finding that the will and other documents like compromise decree etc. are forged then it will file a complaint under Section 195, Cr. P.C.

8. It was also urged that in the consolidation proceedings a notification was made under Section 52, U.P. Consolidation of Holdings Act, in 1968 and the proceedings were closed and after the closure of the proceedings there was no court which could file the complaint in respect of these forged documents under Section 195, Cr. P.C. This is also not correct because the S.O.C. in the year 1972 remanded this case back to the C.O. which means that both the court of the C.O. and the court of the S, O. C. were very much in existence till that year. It was also urged that the forged papers were filed before the C.O. who is not involved in this case as another C.O. has taken over in his place and because the C.O. even if he committed any forgery did not do so in his official capacity, therefore, in spite of Section 195, the complaint can be filed by the C.O. himself against his predecessor, the earlier C.O. said to be involved in this offence. Even if the C.O. involved in this offence cannot file this complaint against his ownself and even if his successor cannot file a complaint because it would be embarrassing for him to file a complaint against his predecessor-in-interest then the S.O.C. can always file a complaint under the provisions of Section 195 of the Code.

9. Then, the learned Counsel referred to the chargesheet submitted by the C. I. D. under Sections 420/465/466/467/468/471/474/120-B, I.P.C. and Section 5(3), Prevention of Corruption Act, and urged that since this case was in respect of so many offences other than those mentioned in Section 195, therefore, the bar of

Section 195 shall not apply and the case could be otherwise filed. This case is, however, mainly in respect of forgery. Offences under Sections 465, 466 and 467 are in respect of forgery and so is the offence under Section 474. Therefore, under these sections the complaint had to be filed by that court or its superior court and the superior court could also file the complaint in respect of connected offences under Sections 420, 460, I.P.C. and Section 5(3), Prevention of Corruption Act, I will, therefore, hold that in this case there was absolute bar of Section 195(1)(b)(ii) and the case could not be initiated on a chargesheet submitted by the C B., C. I. D.

10. The revision is, therefore, allowed and the order of the learned Special Judge is set aside.

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