

Sada Singh Vs. State of U.P.

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Court : Allahabad

Decided On : Feb-28-2002

Reported in : 2002CriLJ3686

Judge : B.K. Rathi, J.

Acts : Indian Penal Code (IPC) - Sections 34, 120B, 177, 181, 193, 218, 406, 420, 463, 465, 466, 467, 468, 471 and 474; Code of Criminal Procedure (CrPC) , 1974 - Sections 193, 195, 195(1), 197 and 340

Appeal No. : Criminal Misc. Appln. No. 1347 of 2002

Appellant : Sada Singh

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Lakshmi Kant Davey, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

B.K. Rathi, J.

1. The request has been made to quash the criminal proceedings of Criminal case No. 740 of 2001 for offence under Sections 120B, 218, 466, 467, 468, 471, 420 I.P.C. pending in the Court of 1st Additional Judicial Magistrate. Shahjahanpur.

2. I have heard Sri L. K. Davey, learned counsel for the petitioner and the learned A. G. A.

3. In brief the facts are that the petitioner had two other brothers, namely, Dilip Singh and Mahendra Singh. The name of the petitioner was mutated on the application of the petitioner on the entire land of his two brothers for the reason that they died issueless. Later on Mahendra Singh appeared and lodged an F.I.R. that he was wrongly shown to have died and the name of the petitioner was got mutated in his place by practising fraud on the basis of forged documents. That the death certificate filed by the applicant is also forged. The case was registered and investigated and charge sheet has been filed against the petitioner.

4. The only contention of the learned counsel for the petitioner is that the prosecution is barred by Sections 195 and 197 Cr.P.C. as the documents were filed in the judicial proceedings but no complaint has been made by the Court and therefore, the trial cannot proceed.

5. Sri L. K. Davey, learned counsel for the petitioner in support of the argument has referred to the several cases.

6. The first case referred to is State of Punjab v. Raj Singh 1998 (36) All Cri C 399 : AIR 1998 SC 768 decided by the Apex Court. In this case, the High Court quashed the F. I. R. being barred by Section 195(1)(b) Cr. P. C. the Apex Court set aside the order of the High Court and observed that the F.I.R. is not barred by the said provision and it will have to be considered whether the prosecution is barred by Section 195(1)(b) Cr.P.C. when the charge sheet is filed after the completion of the investigation. Therefore, no law which may support the argument of the learned counsel, was laid down in this case.

7. The other case referred to is Tukaram Annaba Chavan v. Machindra Yashwant-Patil 2001 (2) JIC, 65 : AIR 2001 SC 994. It is also decided by the Apex Court. In

this case, the complaint was filed for offences under Sections 177, 181, 193, 406, 465, 474 I.P.C. The Magistrate issued processes under Sections 463/34 I.P.C. only. The matter was challenged on the ground that the complaint could be lodged by Charity Commissioner and not by the private person. The allegation of the complaint was that the accused got affixed fake signatures of educational institution and 'got registered changes in change report before Charity Commissioner. It was found that the matter was pending before the Charity Commissioner, who is to determine the validity of the changed report. Therefore, the matter before criminal Court was suspended till the disposal of proceeding before Assistant Charity Commissioner. Therefore, this authority does not lay down any law regarding the bar of Section 195 Cr.P.C.

8. The last case referred to is M.S. Ahlawat v. State of Haryana 2000 SCC (Cri) 193 : AIR 2000 SC 168. In this case, the Apex Court found in earlier writ petition that the affidavit has been filed with forged signatures and that false statements 'were given. Therefore, after a show cause notice conviction under Section 193 Cr.P.C. was recorded. The writ petition was filed to set aside the conviction, in which it was held that the Hon'ble Supreme Court should have filed a complaint under Section 340 Cr.P.C. and could not have recorded conviction and, therefore, the conviction was set aside. This authority therefore, has also no application in the present case.

9. The relevant law which is applicable in the present case was laid down by three Judges Bench of the Apex Court in the case of Sachinda Nand Singh v. State of Bihar 1998 (36) All Cr C 466 : AIR 1998 SC 1121. In view of the law laid down in this case, the bar of Section 195(1)(b)(ii) Cr.P.C. does not apply in the present case where the forgery was committed before the documents were filed in the Court.

10. Therefore, in view of the above I find that there is no bar for prosecution of the petitioner for the above offences.

11. The petition is without merit and is hereby dismissed.

