

Rajendra Singh Vs. Surendra Singh

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Court : Madhya Pradesh

Decided On : Mar-20-1992

Reported in : 1992(0)MPLJ650

Judge : S.K. Dubey, J.

Acts : [Advocates Act, 1961](#) - Sections 29, 30 and 45; Indian Penal Code (IPC) - Sections 467; Code of Criminal Procedure (CrPC) , 1974 - Sections 190, 195 and 195(1)

Appeal No. : Cri. Rev. No. 69 of 1987

Appellant : Rajendra Singh

Respondent : Surendra Singh

Advocate for Def. : B.S. Rathore, Adv.

Advocate for Pet/Ap. : Swami Saran, Adv.

Judgement :

ORDER

S.K. Dubey, J.

1. This revision under Section 397 of the Code of Criminal Procedure (for short the 'Code'), is against the order dated 25-3-1987, passed' by First Additional Sessions

Judge, Morena, in Criminal Revision 171/85 preferred against the order dated 4-9-1985 passed in Criminal Case No. 191/84 by the

2. Facts leading to this revision are thus : the non-petitioner/complainant Dr. Surendra Singh and the petitioner/accused Rajendra Singh are real brothers. The non-petitioner filed a complaint under Sections 420 and 467 of the Indian Penal Code (for short the 'IPC') and Section 45 of the [Advocates Act, 1961](#) (for short the 'Act') against the petitioner on the allegations that the petitioner/accused was a Deputy Ranger, who was convicted and sentenced for an offence under Section 409, IPC on 31-7-1964 in Criminal Case No. 202/64 by the Additional District Magistrate (Judicial), Tikamgarh, that conviction and sentence were maintained by the High Court. The petitioner after manipulating the proceedings got himself declared as dead, thereafter, the petitioner without getting himself enrolled as an Advocate on the roll of the State Bar Council, is practising in the Courts at Morena and Gwalior. For the offence under Section 467, IPC, it was alleged that in revenue proceedings before the Tahsildar, the petitioner produced a Will, said to be executed by the father of the petitioner and non-petitioner, which was found to be forged. On the averments of the complaint, the Magistrate after holding an inquiry under Section 202 of the Code took cognizance, and issued a process against the petitioner. The petitioner on his appearance, moved an application dated 8-7-1985 objecting that the facts constituting the offence did not make out any offence under Section 420, IPC and for under Section 45 of the Act and the cognizance for the offence under Section 467, IPC was barred under Section 195(I)(b)(ii) of the Code as the complaint having not been filed by the Tahsildar, in whose Court the forged Will is said to have been given in evidence. The Magistrate after hearing and on going through the record, observed that the complainant has no locus standi to file the complaint under Section 467, IPC, and no prima facie case under section 420, IPC and under Section 45 of the Act having been made out, dismissed the complaint. Aggrieved of this, the non-petitioner preferred a revision. The revisional Court after appreciating the material on record, concurred with the order of the trial Court for not proceeding with the case under Section 420, IPC, but for the offence under Sections 467, IPC and 45 of the Act, remitted the case for considering the case at the stage of hearing on framing of charge.

3. Shri Swamisaran, counsel for the petitioner/accused and Shri B. S. Rathore, counsel for the non-petitioner/complainant were heard.

4. The first contention of the learned counsel for the petitioner that the Magistrate could not have taken cognizance for an offence under Section 467, IPC, except on a complaint in writing by the Tahsildar in whose Court document (the 'Will') was produced and tendered in evidence, in my opinion, has got a force.

5. Section 195 of the Code speaks of prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. Sub-section (1)(b)(ii) of the section lays down that no Court shall take cognizance of any offence described in the section mentioned therein 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, except on the complaint in writing of that Court or of some other Court to which that Court is subordinate. Therefore, at the time of taking cognizance under Section 190 of the Code, in the circumstances enumerated therein, Section 195 puts a limitation on the unfettered powers of the Magistrate to take cognizance. It is at that stage when the Magistrate is taking cognizance under Section 190 has to examine the facts of the complaint before him and determine whether his power of taking cognizance under Section 190 has or has not been taken away by any of the clauses contained in Section 195(1). If on determination, it is found that the offence alleged is one of the enumerated offences in clause (a) or (b) of Section 195(1), the Magistrate would have no jurisdiction to take cognizance, unless a complaint is filed for the offences by the public servant concerned for the offences enumerated in clause (a) and by the Court of some other Court to which that Court is subordinate for the offences mentioned in clause (b) of Section 195(1). See *Govind Mehta v. The State of Bihar*, AIR 1971 SC 1708.

6. In the case of *Patel Laljibhai v. State of Gujarat*, AIR 1971 SC 1935, the Apex Court considered that, the purpose and object of the Legislature in creating the bar against cognizance of private complaints in regard to the offences mentioned in Section 195(1)(a)(b) that is to save the accused person from vexatious or baseless prosecutions spited by feeling of vindictiveness on the part of the private

complainants to harass their opponent and also to avoid confusion which is likely to arise on account of conflicts between findings of the Court in which forged documents are produced or false evidence is led and the conclusions of the criminal Courts dealing with the private complaint. It is for this reason that the Legislature has entrusted the Court whose proceedings had been the target of the offence of perjury to consider the expediency in the larger public interest of a criminal trial of the guilty party.

7. Section 195(l)(b)(ii) of the Code speaks of any of offences described in Section 463, or punishable under Section 471, Section 475 or Section 476, IPC, 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. Chapter XVIII of IPC deals with the offences relating to documents and to property marks. What constitutes forgery, has been very elaborately defined in Section 463, IPC which has been referred in a comprehensive sense under Section 195(l)(b)(ii) of the Code, so as to include cognate sections and to embrace all species of forgery, and Section 467. is one of them. See *Dr. S. L. Goswami v. M. P. High Court*, AIR 1979 SC 437. Therefore, for an offence under Section 467, IPC no cognizance could have been taken by the Magistrate on a private complaint, to that extent, the jurisdiction of the Magistrate was barred under Section 195(l)(b)(ii) of the Code.

8. Coming to the case under Section 45 of the Act, the interference in the order is not needed.

9. Section 45 of the Act is a penal provision which prescribes a penalty for a person illegally practising in a Court or before other authority. A person's right to practise is recognised by Chapter IV of the Act. Advocates is the only recognised class of persons who are entitled to practise law, which is clear from Section 29. Section 30 of the Act speaks that subject to the provisions in the Act every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territory to which the Act extends. Section 33 of the Act lays down that except as otherwise provided for in the Act or in any other Law, for the time being in force, no person shall, on or after the appointed day, be entitled to practise in any Court or before any authority or person, unless he is enrolled as

an Advocate under this Act. An exception to this general rule has been incorporated in Section 32 of the Act which lays down that notwithstanding anything contained in this Chapter, any Court, authority or person may permit any person, not enrolled as an Advocate under the act to appear before it or him in any particular case. Therefore, by reading the two provisions contained in Sections 32 and 33, it is clear that a specific prohibition has been laid down by the Act both in positive and negative term that no person other than an advocate will be entitled to practise law in any Court or before any authority. This position has been made clear beyond doubt by Section 45 which provides penalty for persons illegally practising in Courts and before other authorities.

10. The profession of law is a liberal and noble profession which requires a specialised skill and training. An advocate is bound by law, that is the provisions of the Act as well as ethics. He has to discharge his duties with dignity, decorum and discipline. Everyone is not entitled to practise at law or appear in Courts unless he obtains a certificate of enrolment under the Act. An advocate works under strict discipline and is subject to right code of conduct and ethics both in Courts as well as outside. Whether this code is prescribed by a chosen body like Bar Council or by the Statute or by the Judicial authorities, the important fact to be noted is that nobody can practise law without being subject to these disciplines as he is under certain obligations and owes a duty to the Court and that is why he is described as an officer of the Court who plays an important role in the administration of justice. Therefore, it is crystal clear that nobody can practise law except on his enrolment under Section 30- of the Act and if any person practises illegally in Court; he commits an offences punishable under Section 45 of the Act.

11. Shri Swamisaran contended that this is not the case with the petitioner. If that is so the petitioner can claim discharge under Section 245 of the Code in the light of evidence adduced under Section 244 of the Code for considering whether against the accused if evidence remains unrebutted, would not warrant his conviction, the accused would be discharged. Even, the petitioner/accused under Section 245(2) of the Code may satisfy the Court that the charge is groundless.

12. As a result of above discussions, the revision is partly allowed, the cognizance under Section 467, IPC is quashed and the case is sent back to the Judicial Magistrate First Class, Morena, for proceeding with the case under Section 45 of the Act, only, in accordance with law. The parties shall appear before the Court on 22-4-1992 for which no fresh notices need be issued as they have been noticed through their counsel.

No costs.

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