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SooperKanoon Citation : sooperkanoon.com/756272

Court : Rajasthan

Decided On : Jan-23-1978

Reported in : 1978WLN(UC)167

Judge : K.D. Sharma, J.

Appeal No. : S.B. Criminal Misc. Petition No. 94 of 1977

Appellant : Doongar Mal

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. S.K. Goel

Disposition : Application dismissed

Judgement :

K.D. Sharma, J.

1. Doongar Mal Kothari has invoked inherent jurisdiction of this Court by way of an application Under Section 482, Cr.P.C. for quashing the criminal proceedings pending against him in the court of the Sessions Judge, Balotra, Under Section 466, IPC. The proceedings are sought to be quashed on the ground that upon coming into force of the new Code of Criminal Procedure the Sessions Judge is precluded from taking cognizance of any offence of forgery denned in Section 463, or punishable under Sections 471 or 475 or 476, IPC except on the complaint in

writing of the court in a proceeding of which the offence has been committed in respect of the document produced or given in evidence.

2. The relevant facts giving rise to this petition Under Section 482, Cr.P.C. may be briefly stated as follows. One Ratti Ram son of Koja Ram resident of Jasol filed an application Under Section 6 of the Rajasthan Relief of Agricultural Indebtedness Act, hereinafter referred to as the Act, in the court of the Debt Relief Court (Civil Judge), Balotra, on 21st October, 1971, for determination of his debts. In that application 6 persons, namely, Narsingh Das, Ulhas Mal, Nath Mal, Bheru Mal, Kesari Mal and Megh Raj were mentioned as creditors of Ratti Ram Doongar Mal petitioner was the counsel engaged by Ratti Ram in that case before the Debt Relief Court. The application Under Section 6 of the Act along with the stay application was registered by the Debt Relief Court on 15th January, 1962, It was alleged that during the period between 3rd January and 15 January 1962, the petitioner added the name of Sanwat Raj, non-petitioner, to the array of creditors both in the application Under Section 6 of the Act & also in the stay application. As Shri Sanwat Raj was not mentioned as a creditor in the original application Under Section 6 of the Act and as his name was later on written in the application, he requested the Debt Relief Court, by way of an application in writing, to launch prosecution against Doongar Mal petitioner having committed forgery and, later on, filed another application Under Section 478/208, old Cr.P.C. for registration of a criminal case against the petitioner Under Section 466, IPC. Thereafter, proceedings were taken against the petitioner under the Legal Practitioners Act and the Bar Council of Rajasthan found him guilty of professional misconduct and reprimanded him for the same under the provisions of the Advocates Act, 1961. Sanwat Raj, non petitioner, preferred an appeal to the Bar Council of India against the order of the Bar Council of Rajasthan, but his appeal was dismissed as withdrawn on 1st May, 1966. Thereafter, Sanwat Raj, non-petitioner No. 2, moved another application in the Debt Relief Court for inquiry into his previous application Under Section 476, old Cr.P.C. The Debt Relief Court started proceedings Under Section 476, old Cr.P.C. against the petitioner and passed an order on 23rd August, 1968, that there were no compelling reasons to pursue the matter further in a criminal court. Aggrieved by this order of the Debt Relief Court, Sanwat Raj, non petitioner No. 2, preferred an appeal in the court of the Sessions Judge, Balotra.

The Sessions Judge, Balotra, dismissed the appeal against Doongar Mai and sent the case back to the learned Civil Judge, Balotra, to take necessary legal steps in accordance with law on the application of Sanwat Raj against Raid Ram. After the decision of the appeal, Sanwat Raj non-petitioner No. 2, filed a complaint against the petitioner on 22nd July, 1970, in the court of the Munsiff Magistrate. Balotra, Under Section 466, IPC because the Sessions Judge, which dismissing the appeal observed that Sanwat Raj was free to take legal steps under the law as Section 195, old Cr.P.C. was not bar to the filing of a complaint against any person other than a party to the proceedings in a court. The learned Magistrate enquired into the complaint and issued process against the petitioner. The petitioner appeared before the learned Magistrate and raised a preliminary objection that no cognizance of an offence Under Section 466, IPC can be taken against him by the court in the complaint of Sanwat Raj in view of the express bar created by Section 195, Cr.P.C. The preliminary objection raised by the petitioner was over ruled by the learned Magistrate, vide his order dated 21st September, 1973. Aggrieved by the order, the petitioner filed a revision-petition in the court of the Sessions Judge, Balotra, but his revision-petition was dismissed. The learned Magistrate, thereafter, committed the petitioner to the court of the Sessions Judge, Balotra, for trial Under Section 466, IPC. Later on, the Sessions Judge proceeded to try the petitioner for the aforesaid offence. Hence, the petitioner has moved this Court Under Section 482, Cr.P.C. for quashing the criminal proceedings.

3. I have carefully gone through the record and heard Mr. S.K. Goel learned Counsel for the petitioner, Mr. K.C. Bhandari, Public Prosecutor for the State and Mr. Sanwat Raj, non-petitioner No. 2. The contention of Mr. S.K. Goel, learned Counsel for the petitioner before me is that by the reason of coming into force of new Code of Criminal Procedure the old Criminal Procedure Code has been repealed and, therefore, in the absence of any complaint in writing of that Court in the proceedings of which the offence of forgery was alleged to have been committed in respect of a document produced or given in evidence, the Sessions Judge, Balotra, is not empowered to take cognizance of the offence of forgery at a certain connected offences against the petitioner. In support of his above contention, he invited my attention to the present Sub-clause (ii) of Clause (b) of Sub-section (1) of Section 195 of the new Code of Criminal Procedure &

contended on a, strength that the new Sub-clause (ii) of Clause (b) of Sub-section (1) of Section 195 Cr.P.C. has no reference to the offence having been committed by a party to the proceeding and so it bars the cognizance of the offence of forgery when it is committed by any person who is not a party to any proceeding in court. Mr. S.K. Goel further argued that, in the instant case the offence of forgery was alleged to have been committed by the petitioner, who was a counsel fir Ratti Ram applicant, in respect of the document produced in the Deb Relief Court. According to the learned Counsel, Clause (c) of Sub-section (1) of Section 195, old Cr.P.C. formerly barred the cognizance of the offence of forgery when it was committed by a party to any proceeding in any court and no such bar was created under the old Cede of Criminal Procedure in such offence was alleged to have been committed by a pleader or a nonparty, but now she legal position has charged after the commencement of the new Code of Criminal Procedure which precludes a court from taking cognizance of the offence of forgery without a complaint in writing of the court in the proceedings of which the offence of forgery was alleged to have been committed in respect of the document produced or given in evidence In support of his above contention, he referred to Ramaswami Iyengar v. Panaaranga Mudaliar A.I.R. 1938 Mad. 173, Kachrual v. P.H. Malwe A.I.R. 1952 Hyd. 7, State v. Nazar Mohammed 1951 R.L.W. 11 and State v. Bhikhubhai A.I.R. 1965 Guj. 70.

4. The learned Public Prosecutor and Mr. Sasnwat Raj, on the other hand, contended that the offence of forgery was committed by the petitioner in respect of a document, i.e., application filed by Ratti Ram for determination of his debt in the Debt Relief Court prior to the coming into force of the new Code of Criminal Procedure and so there is no bar in taking cognizance there of by the Sessions Judge in the absence of a complaint in writing by the Debt Relief Court, although Sub-clause (ii) of Clause (b) of Section 195(1) new Criminal Procedure Code does not refer to the, offence having been committed by a party to the proceeding. In support of their above proposition learned Public Prosecutor and Mr. Sanwat Raj non-petitioner, No. 2, relied upon an authority of the East Punjab High Court Ram Singh v. The Crown A.I.R. E. Punj. 25 (6), wherein the following observations were, made by Achhru Ram, J.:

It is well settled that no one has any vested right, in any procedural rule and that, therefore, any change in the procedural law has a retrospective effect in the sense of being applicable even to judicial proceedings initiated before the change, provided of course this can be done without affecting any substantive rights acquired by any of the parties to the proceedings before the change. It is, however, equally well-settled that the validity or operation of any order validly passed or any act validly done by judicial tribunal under the procedural law for the time being in force cannot be affected by any subsequent change in the said law. It, therefore, follows that the action taken by the Magistrate, under the provisions of Sub-section (1) of Section 3 on 30th September, 1948, in making over the case to the Sessions Court can not be, affected by the subsequent cancellation of the notification Under Section 2(b), in respect of Ludhiana District and the consequent change of procedure applicable to the trial of cases like the present in, the said district, By reason of that action the learned Sessions Judge was properly and validly seized of the case on the day the Provincial Government chose to make an order for the cancellation of the notification and he continued to be seized of that case even after, the said Government had cancelled the notification.

The Public Prosecutor also relied upon *Hari Ram Onkar v. Mst. Radha* A.I.R. 1943 Nag. 327.

5. I have given my best consideration to the rival contentions. It is no doubt true that Sub-clause (iii) of Clause (b) of Sub-Section (1) of Section 195, new Cr.P.C. bars the cognizance of the offence of forgery and certain connected offences when they are committed even by any person who is not a party to any proceeding in court in the absence of any complaint in writing by that court Prior to the, coming into force of this new Code of Criminal Procedure, it was evident from Section 195(1)(c), old Cr.P.C. that it barred the Cognizance of the offence of forgery when it was committed by a party to any proceeding in any court in respect of a document produced in that court, unless there was a complaint in writing by that court. The old Section 195 Created no such bar if such offences was committed by any person, who was not a party to any proceeding in court. In the instant case, Sanwat Raj, non-petitioner No. 2, filed a complaint against Doongar Mal, petitioner, Under Section 446, IPC. In the court of the Munsiff-Magistrate, Balotra,

prior to the commencement of the new Code of Criminal Procedure on the ground that the petitioner, being a pleader committed forgery by adding the name of Sanwat Raj as a creditor in the application filed by his client Ratti Ram in the Debt Relief Court, Balotra, for determination of his debt and for stay of proceedings. At the time when the complaint was filed in the court of the Munsiff-Magistrate Balotra there was no bar created by Clause (c) of Sub-section (1) of Section 195 old Cr.P.C. and the cognizance of the alleged offence of forgery could be taken by the competent court, and, in fact the cognizance of the offence of forgery was taken by the Munsiff-Magistrate on the complaint filed by Sanwat Raj. The pertinent question that arises for determination is whether after the coming into force of the new Code of Criminal Procedure Sub-clause (ii) of Clause (b) of Sub-section (1) of Section 195 thereof bars the cognizance, in the absence of a court complaint, of the offence of forgery and certain connected offences which were alleged to have been committed (when the old Cr.P.C. was in force) in respect of a document produced by a person who was not a party to any proceeding in court, and whether the trial of the petitioner on the complaint of Sanwat Raj for the offence Under Section 466, IPC cannot be continued and is liable to be quashed.

6. Before dealing with this important question of law, I may observe that committal proceedings against the petitioner were pending in the court of the Munsiff-Magistrate, Balotra, at the time when the new Code of Criminal Procedure came into force. The proviso to Clause (b) of Sub-section (2) of Section 484 of the new Code clearly lays down that every enquiry under Chapter XVIII of the old Code which was pending on the date on which the new Code came into force, shall be dealt with and disposed of in accordance with the provisions of the new Code. The learned Magistrate, therefore, followed the procedure for commitment laid down in the new Code and committed the petitioner to the court of the Sessions Judge, Balotra, for trial Under Section 466, IPC. The Sessions Judge, in my opinion is not debarred from taking cognizance of the offence Under Section 466, IPC against the petitioner upon committal of the case to his Court merely because in the absence of court complaint the proviso to Sub-clause (ii) of Clause (b) of Sub-section (1) of Section 195 of the new Code of Criminal Procedure bars the cognizance of the offence of forgery and certain connected offences when they are committed even by a person, who is not a party to any proceeding in court in

respect of the document produced or given in evidence. The reason is that the offence was committed and taken cognizance of by the Munsiff Magistrate Balotra, prior to the Commencement of the new Code of Criminal Procedure' and be reason of repeal of the old Code of Criminal Procedure, the criminal proceedings cannot be held to have lapsed or automatically came to an end. In my opinion, the petitioner could still be tried for the offence committed by him prior to the commencement of the Code of Criminal Procedure, 1973 & of which cognizance was taken under the old Code on complaint filed by Sanwat Raj.

7. On merits, it is not desirable for me to express any definite opinion because such an expression of opinion may cause prejudice to either party. Suffice it to say that it is not a case where the prosecution allegations ever when accepted as true, do not prima-facie disclose any offence against the petitioner. Consequently, I am of the view that it is not a fit case for interference by this Court in exercise of its inherent powers at an interlocutory stage when the case is pending for trial in the court of the Sessions Judge, Balotra.

8. In the result, the application Under Section 482, Cr.P.C. filed by Doongar Mal is dismissed.