

In Re: V.V.L. Narasimhamurthy

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Court : Chennai

Decided On : Aug-12-1953

Reported in : AIR1955Mad237; 1955CriLJ716; (1954)IMLJ650

Judge : Somasundaram, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) -- Sections 195, 195(1), 215 and 439; Indian Penal Code -- Sections 193, 467 and 471

Appeal No. : Criminal Misc. Petn. No. 608 of 1953

Appellant : In Re: V.V.L. Narasimhamurthy

Advocate for Def. : N. Bapiraju, Adv. for ;P.W.1. and ;Public Prosecutor

Advocate for Pet/Ap. : K.S. Jayarama Aiyar, Adv. for ;T. Anantha Babu, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Somasundaram, J.

1. This is a petition to quash the order of committal passed in P. R. C. No. 11 of 1953 on the file of the Stationary Sub-Magistrate; Rajahmundry. The circumstances under which this petition has been preferred are these:

The petitioner herein as the guardian of his minor daughter filed a suit in O. S. No. 33 of 1848 on the file of the Subordinate Judge, Rajahmundry, on the basis of a will said to have been executed by one Gunnamma. The will was filed along with the plaint. There was also a letter said to have been written by the two sons of Gunnamma confirming the will and it was also filed along with the plaint and the will. This suit was filed against the complainant in P. R. C. No. 11 of 1953 who was the first defendant in the suit. The defendant there claimed the properties under a settlement said to have been executed by one of the sons of Gunnamma. The defendant in his written statement attacked the will and the letter as forgery. The documents were sent to the Finger Print Expert as the will was only bearing the thumb impression of the testator. The petitioner herein, i.e., the father of the minor girl also gave evidence in support of the will. But after the opinion of the Finger Print Expert was obtained, the father withdrew the suit with the permission of the court and the suit was ultimately dismissed. The first defendant, therein has thereafter filed this complaint against the petitioner for an offence under Rs. 467 and 471, I. P. C. The learned Magistrate after taking evidence has committed the petitioner to take his trial for an offence under Sections 467 and 471, I. P. C. Against that committal, this petition was preferred for quashing the committal order.

2. The main point on which Mr. Jayarama, Aiyar appearing for the petitioner seeks to quash this committal is that on the facts an offence under Section 193, I. P. C. is disclosed for which the court cannot take cognisance without a complaint by the court as provided under Section 195(1)(b), Criminal P. C. The first question which arises for consideration is whether on the facts mentioned in the complaint, an offence under Section 193, I. P. C. is revealed. Section 193 reads as follows:

'Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to 7 years, and shall also be liable to fine.'

'Fabrication of false evidence' is defined in Section 192. The relevant portion of it is

'Whoever causes any circumstance to exist intending that such circumstance may appear in evidence in a judicial proceeding and that such circumstance may cause any person who in such proceeding is to form an opinion upon the evidence to entertain an erroneous opinion touching any point material to the result of such proceeding is said 'to fabricate false evidence.'

The effect of the allegations in the complaint preferred by the complainant is that the petitioner has caused this will to come into existence Intending that such will may cause the Judge before whom the suit is filed to form an opinion that the will is a genuine one and, therefore, his minor daughter is entitled to the property. The allegation, therefore, in the complaint will undoubtedly fall under Section 192, I. P. C. It will, therefore, amount to an offence under Section 193, I. P. C., i.e., fabricating false evidence for the purpose of being used in the judicial proceeding. There is no doubt that the facts disclosed will also amount to an offence under Sections 467 and 471, I. P. C. For prosecuting this petitioner for an offence under Sections 467 and 471, a complaint by the court may not be necessary as under Section 195(1)(c), Criminal P. C. a complaint may be made only when it is committed by a party to any proceeding in any court.

3. Mr. Jayarama Aiyar does not give up his contention that the petitioner, though he appears only as guardian of the minor girl, is still a party to the proceeding. But it is unnecessary to go into the question at the present moment and I reserve my opinion on the question whether the guardian can be a party to a proceeding or not, as this case can be disposed of on the other point viz., that when the allegations amount to an offence under Section 193, I. P. C., a complaint of court is necessary under Section 195(1) (b), Criminal P. C. and this cannot be evaded by prosecuting the accused for an offence for which a complaint of court is not necessary.

4. That such a course is not permissible has been held in a series of decisions of this court beginning with -- 'Perianna Muthirian v. Vengu Ayyar AIR 1929 Mad 21 (A) which was followed in -- 'Ravanappa Reddi v. Emperor', AIR 1932 Mad 253 (B) and -- 'Appadurai Nainar v. Emperor', AIR 1936 Mad 89 (C). All these decisions have been reviewed by Govinda Menon J. in --'In re, Chinnayya Goundan', AIR

1948 Mad 474 (D).

5. It is pointed out by the learned Public Prosecutor that where the allegations amount to defamation as well as fabricating false evidence it has been held by a Full Bench of this Court that a complaint by court for the offence under Section 193, I. P. C. is not necessary and that the complainant may proceed without a complaint by the court. On the principle of this decision, it was contended that in a case where the offence is one under Sections 467 and 471, I. P. C. for which no complaint by court is necessary, a complaint by court for the offence under Section 193, I. P. C. should not be insisted upon. Apart from this, it was also contended by him that in a case where the plaintiff withdraws his suit without giving in opportunity to the court to give a finding on the evidence before it as to whether it is false or true, the court should not be asked to file a complaint for an offence under Section 193, I. P. C. and that in such circumstances the private party should be allowed to prosecute for the offence under Sections 467 and 471, I. P. C. for which he is entitled to prosecute the accused in the case.

In the Full Bench decision in -- 'Narayana Ayyar v. Veerappa Pillai', : AIR1951 Mad34 (E), Govinda Menon J. observes:

'We are in entire agreement with the decision in AIR 1929 Mad 21 (A), which was followed in AIR 1932 Mad 253 (B), which again was followed in AIR 1936 Mad 89 (C), where the proposition of law has been laid down that parties should not be allowed to evade the provisions of Section 195(1) (b), Criminal P. C. by filing a complaint under another provision of the Penal Code if, clearly, an offence under Section 193, I. P. C. or any other section mentioned in Section 195(1)(b), Criminal P. C. has been committed. This view is supported not only by the three cases adverted to above but also in -- 'Antarvedi Sarma In re', AIR 1946 Mad 489 (F); AIR 1948 Mad 474 , (D); -- 'Srinivasa Ayyangar v. Ramasami Ayyangar : AIR1945 Mad9 ; -- 'Subramania Ayyar v. Swamikannu Chetti : AIR1933 Mad413 ; -- 'Somayya v. Satyanarayana', 1934 M WN 134 (I); and -- 'Gopalaswami Kurukondar v. Emperor', 1935 MWN 248 (J).'

6. The Full Bench, therefore, has upheld those decisions which lay down the principle that where on the facts disclosed two offences are made out, for one of

which a complaint by court is necessary and for the other a complaint by court is not necessary, the party should not be allowed to evade the provisions relating to a complaint by court. The case of defamation and of fabricating false evidence stands on entirely different footing. In the case of defamation, under the provisions of Section 198, Criminal P. C. a complaint by the person defamed is necessary. In respect of those offences which are committed against an individual for which the aggrieved person has to file a complaint under Section 198, Criminal P. C., one should not insist upon a complaint being filed by court.

7. The offences mentioned under Section 195, Criminal P. C. are offences against public justice. The State and the Courts are interested in prosecuting offenders against public justice more than private members of the society. In such cases, the salutary principle will be to insist upon the court filing a complaint, rather than allowing a private individual to prosecute the accused for offences for which he can, without the permission of the court prosecute. In this case, the facts disclosed amount to an offence under Section 193, I. P. C. as well as an offence under Sections 467 and 471, I. P. C. For the offence under Section 193, a complaint by court is necessary and that is sought to be evaded by preferring a complaint for the offences under Sections 467 and 471, I. P. C. The party should not be permitted to do so. I hold, therefore, that a complaint by court is necessary in this case and as there has been no complaint by court, the committal is an illegal one and has, therefore, to be quashed.

8. The petition is allowed and the committal order of the lower court is quashed.

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