

Manohar Singh Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Apr-05-2004

Reported in : 2004CriLJ4488,2004(3)JKJ467

Judge : Y.P. Nargotra, J.

Acts : Code of Criminal Procedure (CrPC) , Svt. 1989 - Sections 195, 195(1), 476 and 561A;

Appeal No. : Case No. 561-A, 62/2003

Appellant : Manohar Singh

Respondent : State and ors.

Advocate for Def. : Sunil Sethi and A.S. Dogra

Advocate for Pet/Ap. : M.A. Goni, Sr. Adv. and; D.S. Chohan, Adv.

Disposition : Petition dismissed

Judgement :

Y.P. Nargotra, J.

1. If a false document is filed in the proceedings of a case whether the court is entitled to lodge a report with the police for registration of an FIR or for that matter it has to proceed lodge a complaint Under Section 195, read with Section 476

Cr.P.C; is the question arising for consideration in this petition Under Section 561A Cr.PC.

2. A murder trial is being conducted in the court of learned Principal Sessions Judge Jammu in case entitled State v. Balwant Singh and Ors. in which one of the accused is Gandharab Singh. Gandharab Singh is in custody as under trial prisoner. On his behalf an application was filed for grant of bail by the petitioner herein, Manohar Singh, brother of the accused. Bail was sought on the ground that wife of the accused had sustained injury in consequence of which she stood admitted in the hospital at Chandigarh. In support of the application a medical certificate was also filed. The prosecution disputed the genuineness of the certificate during the course of hearing of application and a communication was filed for indicating that the certificate was false. Learned Sessions Judge taking note of the falsity of the certificate rejected the bail application by his order-dated 2.5.2003. The prosecution filed an application before the trial court seeking registration of a case against the persons involved in submission and preparation of fake certificate in the said bail application. Learned Sessions Judge by his order dated 3.5.2003 allowed the prayer of the prosecution and direction for transmission of the petition in original to S.S.P. Crime Branch Jammu for registration of case and investigation along with Photostat copies of the reports placed on the file, Photostat copy of the report attested on 29.4.2003, Photostat copy of the application moved by the accused Gandharab Singh through his brother Manohar Singh and Photostat copy of the confidential report received from the concerned authority. This order passed by the Sessions Judge is the subject matter of challenge in this petition.

3. Undisputedly on the motion of the learned Pr. Session Judge an FIR has been registered by the Crime Branch for commission of offences Under Section 420,468,193,467,471 and 120B RPC. The contention of Mr. Goni learned counsel for the petitioner is that when the learned Sessions Judge formulated an opinion that the document filed with the bail application was false he ought to have followed the procedure prescribed in sections 195 & 476 Cr.P.C. and thereafter he should have made a complaint against the accused for their trial instead of asking for lodging the FIR. In Support of his contention he relies upon AIR 1983 SC 1053.

4. Per contra the contention of Mr. Sethi, learned counsel for the respondents is that there is no bar created in Criminal Procedure Code prohibiting lodging of FIR at the instance of the court.

5. I have considered the respective contentions of learned counsel for the parties and in my view there is no merit in the submissions of learned counsel for the petitioner.

6. Section 195(1)(b) Cr.P.C. provides that no court shall take cognizance of any offence punishable under any of the following sections of the same Code, namely sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228 when such offence is alleged to have been committed in or in relation to any proceeding in any court except on the complaint in writing of such court or of some other court to which such court is subordinate. Section 195 thus creates a bar upon jurisdiction of a criminal court to take cognizance of the offences mentioned in the section except upon a complaint made in writing by the court before whom in a proceeding any of such offences is alleged to have been committed or by the court which is superior to such court. Section 476 Cr. P.C. provides the procedure to be followed for making the complaint referred to in Section 195. Section 195 Cr.P.C. has no application where an accused is alleged to have committed the other offences not mentioned in the section. What is prohibited is the taking of the cognizance by the court upon any of the offences mentioned in the section. The question of taking cognizance upon any of such offences does not arise at this stage. The case has been registered against the accused/petitioner for commission of various offences out of which only the offence Under Section 193 RPC falls within the ambit of Section 195(1)(b). The offences alleged to have been committed are yet to be investigated. There is nothing in Section 195 or 476 to indicate that investigation by the police is barred. There is no bar in law for sending a case to the police for registration of an FIR investigation into the offences, which are alleged, to have been committed by a person in relation to the proceedings pending before the court. The authority relied upon by learned counsel for the petitioner has no application to issue in hand.

7. Therefore, there, is no merit in the petition of the petitioner, which is accordingly dismissed. The interim direction regarding not arresting the accused in the FIR registered is hereby vacated. Record of the trial court along with copy of this order be transmitted back.

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