

Basanthi Sarkar and ors. Vs. State of West Bengal and ors.

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Court : Kolkata

Decided On : May-10-2010

Judge : Dipankar Datta, J.

Acts : Indian Penal Code (IPC) - Sections 34, 120B, 193, 205, 419, 467 and 506;
;Code of Criminal Procedure (CrPC) - Sections 156(3), 173, 195, 195(1), 320 and 340

Appeal No. : W.P. 2827(W) of 2010

Appellant : Basanthi Sarkar and ors.

Respondent : State of West Bengal and ors.

Advocate for Def. : Supriyo Roy Chowdhury, Adv. and; Dipanjan Chatterjee and;

Advocate for Pet/Ap. : Sandip Kumar Bhattacharjee,; Suman Basu,; Abdul Masood

Disposition : Petition dismissed

Judgement :

Dipankar Datta, J.

1. The petitioners are aggrieved by investigation of Kalyani Police Station Case No. 671 dated 11.12.2009 under Sections 467/193/419/120B of the Indian Penal

Code (hereafter the IPC), registered on the basis of an order dated 7.12.2009 passed by the Additional Chief Judicial Magistrate, Kalyani, Nadia (hereafter the learned Magistrate), on a petition filed by the respondent No. 4 under Section 156(3) of the Code of Criminal Procedure (hereafter the Cr PC).

2. They have, inter alia, prayed for orders to quash the proceedings arising out of the said case and to restrain the Officer-in-Charge of Kalyani Police Station, respondent No. 3, from arresting them.

3. It would be appropriate to give a composite picture of the facts, as revealed from the pleadings, giving rise to the present petition.

4. The petitioners 1 and 2, belonging to Scheduled Caste community, are married to each other. The petitioner No. 2 is a patient of epilepsy. He is unable to earn a living. The respondent No. 4 had assured through the petitioner No. 3 to arrange a job for the petitioner No. 1 in the State of Maharashtra. However, the petitioner No. 1 subsequently obtained information that the respondent No. 4 was of perverted mentality and engaged himself in flesh trade. He induced women of the State of West Bengal to travel to Maharashtra assuring them of jobs taking advantage of their financial condition, but ultimately they landed in brothels. The petitioner No. 1 grew suspicious and spurned the offer of the respondent No. 4. It is also claimed by the petitioner No. 1 that the respondent No. 4 had approached her with intent to have sexual contacts but because of resistance put up by her, the respondent No. 4 did not succeed in his evil design.

5. Infuriated thereby, the respondent No. 4 lodged a complaint with the respondent No. 3 alleging criminal intimidation by the petitioners. The same resulted in N.G.R. Case No. 162 of 2009. On receipt of P.R. No. 144/09 under Sections 506/34 of the IPC, the learned Magistrate on 8.4.2009 took cognizance, issued summons and fixed 28.5.2009 for service return. The petitioners surrendered before the learned Magistrate on 15.5.2009 and were enlarged on bail.

6. The petitioners claim to be ordinary persons, not very educated, and as such were not aware that they were required to appear before the learned Magistrate on 28.5.2009. They apprehend that because of such ignorance and consequent non-

appearance before the learned Magistrate, they have become the victim of another conspiracy hatched by the respondent No. 4.

7. It appears from the order dated 28.5.2009 passed by the learned Magistrate that the respondent No. 4 'filed a affidavit and a Mutual petition'. On perusal of the record and the compromise petition, the learned Magistrate found the offence compoundable. Accordingly, he directed that the offence under Section 506 of the IPC be compounded as per provisions of Section 320 of the Cr PC and discharged the petitioners from their bail bonds.

9. A petition followed at the instance of the respondent No. 4. The learned Magistrate by order dated 8.10.2009 held as follows:

In view of the decision as reported in (2005) C.Cr.L.R. (Cal) 598 and 2009 Cri.L.J. 355 (S.C.) this Court has no power to fall back upon the said fact but the said petitioner/defacto-complainant' can certainly take the course of law separately to redress his grievance and accordingly the instant petition is disposed of.

10. The respondent No. 4 then filed the application under Section 156(3) of the Cr PC referred to above. He alleged therein that he was neither present before the learned Magistrate on 28.5.2009 nor did he sign any compromise petition or swear any affidavit; that the affidavit/petition must have been signed by someone other than the respondent No. 4 who posed as if the respondent No. 4 was placing and moving the compromise petition; that the petitioners had connived with their learned advocate resulting in such fraudulent practice and that the conspiracy must be the outcome of any wise brain. He accused the petitioners of having committed offence punishable under Sections 193/467/419/120B of the IPC and prayed that the complaint be sent to the respondent No. 3 for being treated as F.I.R.

11. Order was passed thereon by the learned Magistrate leading to registration of F.I.R. and investigation is in progress.

12. Mr. Bhattacharya, learned advocate for the petitioner, contended that the learned Magistrate committed gross jurisdictional error in directing registration of F.I.R. on the complaint of the respondent No. 4. According to him if at all the allegation of the respondent No. 4 in the Section 156(3) application is to be believed, no order for investigation could be passed by the learned Magistrate since Section 195 of the Cr PC is a clear bar. He contended that since the allegations levelled by the respondent No. 4 constitute offence punishable under Sections 193 and 205 of the IPC, the learned Magistrate would have no power to take cognizance of such offence and that the remedy of the respondent No. 4, if at all, lies in approaching the learned Magistrate by filing an application under Section 340 of the Cr PC. He, accordingly, prayed for quashing of the complaint, subsequent registration of case and investigation thereof.

13. In support of his submission, Mr. Bhattacharya relied on the decisions reported in : AIR 1982 SC 1238: Chandrapal Singh v. Maharaj Singh and : AIR 2000 SC 168: M.S. Ahlawat v. State of Haryana.

14. The petition has been opposed by Mr. Roy Choudhury and Mr. Chatterjee, learned Advocates for the State and the respondent No. 4 respectively.

15. By referring to the decision reported in (1998) 2 SCC 493: Sachida Nand Singh v. State of Bihar, Mr. Roy Choudhury contended that an allegation relating to commission of forgery of a document far outside the precincts of the Court and long before its production in the Court can not be treated as one affecting the administration of justice merely because that document later reached the records of the learned Magistrate's Court; therefore, the bar in Section 195(1)(b) is not applicable in the present case and the learned Magistrate committed no error in directing registration of F.I.R. and conducting investigation since the complaint, prima facie, discloses commission of cognizable offence. He, accordingly, prayed for dismissal of the writ petition.

16. Mr. Chatterjee raised a preliminary objection in respect of maintainability of the writ petition. According to him, the bar in Section 195 is in respect of taking cognizance of the offences of the nature mentioned therein and not in relation to investigation by the police. The opening words of Section 195 of the Cr PC are 'No

court shall take cognizance' and consequently the bar does not operate against registration of a criminal case or investigation by the police. So long the Court competent to take cognizance does not do so, the petitioners cannot claim to be persons aggrieved having locus standi to maintain the petition. He relied on the decision reported in (2006) 3 SCC (Cri) 179: State of Karnataka v. Pastor P. Raju in this regard.

17. He also relied on the decision in Sachida Nand Singh (supra). Additionally, he relied on the decision reported in 2005 SCC (Cri) 1101: Iqbal Singh Marwah v. Meenakshi Marwah wherein the Constitution Bench of the Supreme Court held, in view divergence of views of two benches of equal strength, that Sachida Nand Singh (supra) had been correctly decided. He contended on the basis thereof that only when forgery of a document is committed when the same is in custodia legis that the bar in Section 195(b)(ii) would be applicable. Admittedly, no offence in respect of the affidavit purported to have been filed by the respondent No. 4 before the learned Magistrate on 28.5.2009 was committed after it reached the Court's records and, therefore, the petitioners can have no cause for grievance in respect of investigation of the complaint of the respondent No. 4.

18. The writ petition, according to him, is devoid of merit and is liable to be dismissed.

19. In reply, Mr. Bhattacharya submitted that the decisions in Sachida Nand Singh (supra) and Iqbal Singh Marwah (supra) relate to Sub-clause (ii) of Clause (b) of Sub-section (1) of Section 195 and not to Sub-clause (i) thereof and, therefore, law declared therein would be of no assistance to the respondents since in the present case the offences alleged to have been committed by the petitioners, if at all, are punishable under Sections 193 and 205 of the IPC.

20. I have given the contentions raised at the Bar my best consideration.

21. I find no reason to uphold the preliminary objection of Mr. Chatterjee and thereby dismiss the writ petition. Acceding to the request of the respondent No. 4, the learned Magistrate has issued necessary direction resulting in the police to set the investigation in motion. The offences alleged to have been committed by the

petitioners are cognizable and the police are empowered by law, inter alia, to arrest them in course of conducting investigation. Issue of locus standi of the petitioner to present a writ petition must not be decided bearing in mind whether at all the writ petition merits interference. A litigant may consider himself to be a person aggrieved but the Court despite holding that he has locus standi to present the petition may not grant the ultimate relief claimed by him. The test to determine the locus standi of the petitioners to maintain this petition is not dependent on whether the competent Magistrate takes cognizance but the test ought to be that of prejudicial affectation of fundamental rights, possibility whereof cannot be ruled out in the circumstances. The petitioners' contentions cannot be shut out on the specious ground that cognizance is yet to be taken upon consideration of the report required to be filed in terms of Section 173 of the Cr PC. Irrespective of the outcome of the challenge raised herein, since the petitioners apprehend that their personal liberty is likely to be encroached upon not in accordance with law, I hold them to be persons aggrieved having locus standi to maintain this writ petition.

22. Now I shall move on to consider how far the contentions advanced by Mr. Bhattacharya on merits deserve acceptance.

23. As noticed above, the complaint lodged by the respondent No. 4 under Section 156(3) of the Cr PC, prima facie, discloses commission of offence by the petitioners punishable under Sections 193/467/419/120B of the IPC.

24. Insofar as Section 193 of the IPC is concerned, though the complaint directly accuses the petitioners of giving false evidence in judicial proceedings how far the accusation is true is a different issue altogether. I am not aware of any law that bars investigation by the police of an offence punishable under Section 193, except on the complaint of the Court. I am of the firm view that the learned Magistrate would have no jurisdiction to take cognizance if at all charge sheet is filed by the police on completion of investigation on the complaint of the respondent No. 4. In Chandrapal Singh (supra), the Court held:

13. ***** the learned Chief Judicial Magistrate, Secunderabad had no jurisdiction to take cognizance of the offence under Section 193, I.P.C. in the circumstances hereinbefore discussed on the complaint of the complainant. The High Court

unfortunately completely overlooked this position. Therefore, at least a part of the complaint is liable to be quashed.

25. I have no hesitation to hold that the stage of taking cognizance of offence under Section 193 of the IPC not having been reached since the investigation is only under way, the decision has no application here.

26. I am also not impressed with Mr. Bhattacharya's contention that Section 195(1)(b)(i) is a bar in relation to investigation of the other offences allegedly committed by the petitioners. Reliance placed by him on Section 205 of the IPC seems to be misplaced. The order dated 28.5.2009 is silent regarding presence of the de-facto complainant before the learned Magistrate. No material appears on the records that would remotely suggest presence of any one personating as the respondent No. 4 before the learned Magistrate on 28.5.2009. In such circumstances, at this stage, it has to be concluded that the learned Magistrate proceeded on the basis of the affidavit purportedly filed by the respondent No. 4 before him and finding the offence under Section 506 of the IPC to be compoundable, the offence was compounded in terms of Section 320 of the Cr PC. Whether or not the order dated 28.5.2009 is proper or not is not an issue before me. I am of the considered view that Section 205 of the IPC is not attracted and consequently the prohibition in Section 195(1)(b)(i) of the Cr PC is also not attracted. I, accordingly, reject the contention.

27. That apart, Mr. Chatterjee is right in pointing out that forgery, if at all, was committed before the notary and not at or after the time when the affidavit had been taken on record by the learned Magistrate. In other words, had forgery of the document i.e. the affidavit been committed when in custodia legis, the bar under Section 195(1)(b)(ii) would apply. This conclusion follows from the law declared in Sachida Nand Singh (supra), since approved in Iqbal Singh Marwah (supra). In the present case, the complaint leveling allegation of commission of offence punishable under Sections 467/419/120B of the IPC takes it beyond the purview of the prohibition contained in Section 195 of the Cr PC and the learned Magistrate cannot be held to have committed jurisdictional error in entertaining the application under Section 156(3) of the Cr PC and passing order thereon.

28. In its decision in *M.S. Ahlawat (supra)*, the Supreme Court upheld the convicted petitioner's contention that the Supreme Court could not have assumed jurisdiction by issue of a notice proposing conviction for forgery and making false statements at different stages in the Court punishable under Section 193 IPC without following the procedure prescribed under Sections 195 and 340 of the Cr PC. It was ruled that primarily the Supreme Court does not exercise any original criminal jurisdiction in relation to offences arising under Section 193 of the IPC and secondly the seriousness of the charge arising under Section 193 of the IPC required an elaborate inquiry and trial into the matter by the competent criminal court and a summary inquiry by mere issuing a show-cause notice and considering affidavits or inquiry reports would not tantamount to the procedure provided under the Cr PC. The order made by the Court earlier convicting the petitioner under Section 193 of the IPC was, therefore, one without jurisdiction and without following the due procedure prescribed under law.

29. I have failed to find the materiality of the law laid down therein to the facts of the case.

30. I, therefore, do not see reason to direct the investigating agency to abort the investigation conducted so far. It shall be free to proceed to complete investigation in accordance with law and to submit either charge sheet or report in final form, as the case may be.

31. The writ petition stands dismissed. Parties shall bear their own costs.

32. Nothing in this order shall be construed to inhibit the competence of the learned Magistrate also to take steps according to law, if at all he has reason to suspect that offences referred to in Section 195 of the Cr PC may have been committed.

33. A copy of this judgment and order shall be forwarded to the District and Sessions Judge, Nadia for transmission to the concerned Magistrate(s) who had the occasion to deal with the earlier complaint of the respondent No. 4 for appropriate action, if the same is warranted in the circumstances.

34. Urgent photostat certified copy of this judgment and order, if applied for, shall be given to the applicant as early as possible.

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