

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.2429 of 2013

ORDER:-

The criminal revision case is filed against the docket order dated 04.11.2013 in CFR No.5059 of 2013 on the file of the II Additional Judicial Magistrate of First Class, Mancherial, by and under which, the learned Magistrate dismissed the private complaint filed by the revision petitioner on the ground that the contents of the complaint fall under Section 195 (1) (b) (ii) Cr.P.C and hence it is not maintainable.

2. The background of the case is that the revision petitioner filed a private complaint against one Bedada Pochaiah stating that he filed a suit in O.s.No.103/2013 on the file of the Principal Junior Civil Judge, Mancherial against him seeking perpetual injunction in respect of land admeasuring Ac.0.04 gts in Sy.No.92 of Teegalpahad, Srirampur village of Mancherial. It is alleged that the said Bedada Pochaiah tampered the decree dated 22.06.1986 passed in O.S.No.104/1987 on the file of the District Munsif, Luxettipet, by erasing the name of one Odela Lingaiah, plaintiff No.2, and filed the said tampered copy of decree in O.S.No.103/2013, and thus the said Bedada Pochaiah committed offences punishable under sections 463, 468 and 471 IPC.

3. The Court below, while observing that the facts and circumstances of the case constitute the offences punishable under sections 192(b), 193, 196, 199, 200 and 209 IPC under Chapter XI of CPC, apart from the offences under sections 463, 468 and 471 IPC. It further observed that the offence may overlap each other and form part of the same transactions, that to Section 195(1)(b)(ii) of Cr.P.C would be applicable, and Sections 195 to 199 of Cr.P.C are exception to the General Rule that any person who having knowledge of the commission of an offence, may set the law in motion by a complaint, and accordingly, dismissed the complaint of the revision petitioner as not maintainable. Hence the present revision.

4. The notices of the present revision are not issued to the 2nd respondent as he is said to be not necessary party and in the revision case itself it is noted that in view of the Judgment of this High Court in a decision reported in

A.PULLA REDDY v. K.PUSHPA AND ANOTHER (2006 (2) ALD (CRL) 748 (AP), notice to respondent No.2 is not necessary.

5. It is submitted that the private complaint filed by the petitioner/complainant was rejected at the threshold on the ground that there is a bar as per Section 195 (1)(b)(ii) Cr.P.C., and therefore notice is not necessary.

6. In the decision relied upon by the petitioner/complainant, this Court has relied upon a five Judge Bench of the Supreme Court in **CHANDRA DEO v. PRAKASH CHANDRA (AIR 1963 S.C., 1430)** and held that the revisional Court is not under obligation to issue notice to the petitioner before directing the Magistrate to take cognizance of the offence. The five Judge Bench of the Supreme Court in the decision referred to in **Chandra Deo's case** observed as under:-

“... An enquiry under Section 202 can be no sense be characterized as a trial for the simple reason that in law there can be but one trial for an offence. Permitting an accused person to intervene during the expiry would frustrate its very object and that is why the Legislature has made no specific provision permitting an accused person to take part in an enquiry.....”

7. As already noticed, the learned Magistrate has refused to take cognizance of the complaint on the ground that there is a bar under Section 195 (1)(b)(ii) Cr.P.C., since it is not filed by the competent authority. The specific case of the complainant is that the 2nd respondent has filed a civil suit based upon a decree in a previous suit by tampering with the previous decree by deleting the name of the 2nd plaintiff in the said decree. The tampering or forging or manipulating with the record was not done when the document was in the custody of Court. A previously obtained decree was sought to be relied upon by the respondent by deleting one of the names from the array of the plaintiffs.

8. In **IQBAL SINGH MARWAH v. MEENAKSHI MARWAH (AIR 2005 S.C, 2119)**, a five Judge Bench of the Supreme Court has laid down the law on the subject at paras 6, 25 and 26 as under:-

“On a plain reading clause (b)(ii) of sub-section (1) of Section 195 is capable of two interpretations. One possible interpretation is that when an

offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 IPC is alleged to have been committed in respect of a document which is subsequently produced or given in evidence in a proceeding in any Court, a complaint by the Court would be necessary. The other possible interpretation is that when a document has been produced or given in evidence in a proceeding in any Court and thereafter an offence described as aforesaid is committed in respect thereof, a complaint by the Court would be necessary. On this interpretation if the offence as described in the Section is committed prior to production or giving in evidence of the document in Court, no complaint by Court would be necessary and a private complaint would be maintainable. The question which requires consideration is which of the two interpretations should be accepted having regard to the scheme of the Act and object sought to be achieved.

In view of the discussion made above, we are of the opinion that Sachida Nand Singh (AIR 1998 SC 1121) has been correctly decided and the view taken therein is the correct view. Section 195 (1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodia legis.

In the present case, the will has been produced in the Court subsequently. It is nobody's case that any offence as enumerated in Section 195 (b)(ii) was committed in respect to the said will after it had been produced or filed in the Court of District Judge. Therefore, the bar created by Section 195 (1)(b)(ii) Cr.P.C. would not come into play and there is no embargo on the power of the Court to take cognizance of the offence on the basis of the complaint filed by the respondents. The view taken by the learned Additional Sessions Judge and the High Court is perfectly correct and calls for no interference.”

9. This decision and other decisions were referred to in another decision of the Supreme Court reported in **MAHESH CHAND SHARMA v. STATE OF U.P. AND OTHERS (AIR 2010 S.C., 812)**. The Supreme Court has reiterated the proposition laid down after referring to the authorities on the subject as under in para 29:-

‘The law on the point is too well settled in the light of the above said two Judgments of this Court that Section 195 (1)(b)(ii) of the Cr.P.C. contemplates a situation where offences enumerated therein are committed with respect of a document subsequent to its production or giving in evidence in a proceeding in any Court.’

10. Similarly, in the recent decision reported in **C.P.SUBHASH v. INSPECTOR**

OF POLICE, CHENNAI (2014) 1 SCC (CrI) 584), the Supreme Court made the following observations:-

“Equally untenable is the view taken by the High Court that the bar contained in Section 195 (1)(b)(ii) could be attracted to the case at hand. In Iqbal Singh Marwah case (AIR 2005 SC 2119) a Constitution Bench of this Court had authoritatively declared that Section 195 (1)(b) (ii) Cr.P.C., was attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in any Court and during the time the same was in *custodia legis*.”

11. As already stated, the learned Magistrate has refused to take the private complaint on file on the ground that there is a bar of Section 195 (1)(b)(ii) Cr.P.C. In view of the decisions cited supra, the finding of the learned Magistrate is untenable and the same is liable to be set aside. The learned Magistrate is directed to proceed further with the private complaint in accordance with law.

12. In the result, the Criminal Revision Case is allowed and the learned Magistrate is directed to proceed further with the private complaint in accordance with law.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

September, 2015

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