

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE NO.1063 of 2016

ORDER :

Heard learned counsel for the petitioner and learned Public Prosecutor for the respondent.

2. The present criminal revision is filed assailing the order, dated 10.02.2016, passed in CrI.M.P.No.1854 of 2015 in C.C.No.499 of 2015, on the file of the VIII Additional Chief Metropolitan Magistrate, Hyderabad, wherein and whereunder the application for discharge was rejected.

3. The only ground urged by the learned counsel for the petitioner is that in view of the bar under Section 195(2)(b) of Cr.P.C., the continuation of proceedings against the petitioner would not be taken up.

4. A reading of the averments in the charge sheet does not anywhere indicate that the document was forged while it is in the custody of the Court. On the other hand, the averments in the complaint and the charge sheet indicate that the accused created the alleged Memorandum of Confirmation of Oral Gift Deed by forging signature of the father of the complainant, used fake stamp paper and got the said document was marked in O.S.No.3537 of 2008 in the file of the VIII Junior Civil Judge, City Civil Court, Hyderabad, as Ex.A-1 on 30.05.2011. It is further alleged that the accused filed Ex.A-15 i.e., Gas Agency Receipt wherein the name of the informant was shown as Rasool Abdullah, whereas his correct name is Mohammed Abdullah.

5. From the narration of the averments in the report, it is clear that the document is said to have been forged and that forged document was produced before the civil Court in the proceedings.

6. As held by the Apex Court in **C.P. Subhash Vs. Inspector of Police, Chennai & Ors.**^[1], bar under Section 195 Cr.P.C. will apply when the said document is forged while it is in the custody of the Court. The Apex

Court held as under:

“11. 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’s case (supra) 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. This Court while taking that view approved the ratio of an earlier decision in [Sachida Nand Singh & Anr. v. State of Bihar & Anr.](#) (1998) 2 SCC 493 where this Court held:

“12. It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the court records.

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23. The sequitur of the above discussion is that the bar contained in [Section 195\(1\)\(b\)\(ii\)](#) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a court.”

7. In view of the judgment of the Apex Court, the ground taken in this application can be accepted.

8. Accordingly, the Criminal Revision Case is allowed by setting aside the order, dated 10.02.2016, passed in CrI.M.P.No.1854 of 2015 in C.C.No.499 of 2015, on the file of the VIII Additional Chief Metropolitan Magistrate, Hyderabad. Miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date: 19th April, 2016

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Date: 19th April, 2016

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[\[1\]](#) 2013(11) SCC 559