

State Of U.P vs Suresh Chandra Srivastava & Ors on 3 May, 1984

Equivalent citations: 1984 AIR 1108, 1984 SCR (3) 738, AIR 1984 SUPREME COURT 1108, 1984 (3) SCC 92, 1984 CRI LJ (NOC) 63, 1985 ALL. L. J. 505, 1984 UJ (SC) 1024, 1984 UJ (SC) 720, 1984 CRIAPPR(SC) 210, 1984 (2) SCC 92, 1984 ALLAPPCAS (CRI) 238, 1984 CURCRIJ 262, 1984 SCC(CRI) 415, 1984 (3) SCR 738, (1983) 56 CUT LT 457, (1984) SC CR R 187, 1984 CRILR(SC MAH GUJ) 269, (1984) 2 CRILC 1, (1984) 2 SCWR 246, 1985 ALL CJ 287, (1984) ALLCRIR 428, (1984) ALL WC 699, (1984) CHANDCRIC 58, (1984) MADLW(CRI) 5, (1984) ALLCRIC 306, (1984) 1 ORISSA LR 38

Author: Syed Murtaza Fazalali

Bench: Syed Murtaza Fazalali, A. Varadarajan, Misra Rangnath

PETITIONER:

STATE OF U.P.

Vs.

RESPONDENT:

SURESH CHANDRA SRIVASTAVA & ORS.

DATE OF JUDGMENT 03/05/1984

BENCH:

FAZALALI, SYED MURTAZA

BENCH:

FAZALALI, SYED MURTAZA

VARADARAJAN, A. (J)

MISRA RANGNATH

CITATION:

1984 AIR 1108

1984 SCR (3) 738

1984 SCC (3) 92

1984 SCALE (1) 707

ACT:

Code of Criminal Procedure-S. 195(1)(b)(ii)-Scope of

HEADNOTE:

The respondents in the appeal and the petitioners in the special leave petitions were the same persons and were employees of the Allahabad High Court. They were found to

have removed some used court fee stamps from old files and re-used them in new cases. The Registrar with the permission of the Chief Justice of the High Court reported the matter to the Police. The Police after investigation submitted before the trial court three charge-sheets for offences under ss. 262, 263, 467 471 and 120B, I.P.C. In an application filed by the respondent for quashing the proceedings, the High Court held that so far as the offences under ss. 467, 471 and 120B, I.P.C. were concerned as they fell within the ambit of section 195(1)(b)(ii) of the Criminal Procedure no cognizance could be taken by the trial court without a complaint being filed, but for other offences the proceedings would continue. Hence these cross appeals and special leave petitions.

Dismissing the appeals and the petitions,

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HELD: The law is now well settled that where an accused commits some offences which are separate and distinct from those contained in s. 195 of the Code of Criminal Procedure, s. 195 will affect only the offences mentioned there in unless such offences form an integral part so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of s. 195 of the Code. [741D]

In the instant case, on the facts narrated by the Registrar in his complaint no offence under ss. 467, 471 and 120B, I.P.C. is at all revealed. At the most the offences against the accused would fall within the ambit of sections 262, 263, 380 and 420, I.P.G. which do not require a complaint under s. 195 of the Code of Criminal Procedure. As such it is not necessary to go into the question as to what offences are connected with ss. 467, 471 and 120B and which are severable from them. The High Court was fully justified in quashing the proceedings against the accused as far as offences under-ss 467, 471 and 120B I.P.C. were concerned, not because they were covered by s. 195 of the Code but because allegations contained in the complaint did not constitute these offences. The High Court was further fully justified in directing that other offences mentioned above did not require a complaint under s. 195 and would have to be tried. [741E-G]

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 461-466 of 1980.

From the Judgment & order dated 9.11.78 of the Allahabad High Court in Criminal Misc. Application Nos. 1655, 1656, 1657, 1691 and 1698 of 1979.

AND Special Leave Petition Nos. 903-908 of 1984 Dalveer Bhandari & H.M. Singh for the appellant. P. Govindan Nair and Pramod Swarup for the respondent. Pramod Swarup for the petitioner in SLP Nos. 903-908 of 1984.

The Judgment of the Court was delivered by FAZAL ALI, J. These appeals by special leave arise out of a judgment dated January 9, 1979 of the Allahabad High Court refusing to quash the proceedings in toto which were pending before the Chief Judicial Magistrate, Allahabad, in exercise of the powers under s. 482, of the Code of Criminal Procedure, 1973 (hereinafter to be referred to as the 'Code'). The High Court, however, quashed the proceedings only in respect of offences under ss. 467, 471 and 120B of the Indian Penal Code and directed prosecution of the respondents in respect of other offences to proceed according to law. In order to understand the implication of the judgment of the High Court, it may be necessary to narrate a few facts. It appears that some time in the year 1967 Shankar Lal Bhargava, who was officiating as Stamp Reporter in the Registry of the Allahabad High Court, with the aid of Suresh Chandra Srivastava and Bishan Swarup, who were clerks of Advocates, removed used stamps and out of them reused three court-fee stamps of the value of Rs. 100 each in First Civil Appeal Nos. 281/67, 282/67 and 257/67. When the matter was detected, an enquiry was ordered and the Judicial Department of the High Court reported to the Registrar that court-fee stamps of the value of Rs. 23,007.50 p. (on 15 sheets) were missing from the judicial file of First Appeal No. 186 of 1960. The enquiry further revealed that in several other cases also court-fee stamps had been taken out from the original files and reused in new cases. The Registrar of the High Court suspected that a well-organised gang of racketeers was operating in the High Court to defraud the Government by surreptitiously removing the used stamps from the judicial files and re-using them in new cases. The Registrar, with the permission of the Chief Justice of the High Court, reported the matter to the Inspector General of Police, U.P., who ordered the Criminal Investigation Department of U.P. to investigate into the matter and ultimately three charge-sheets were submitted for offences under ss. 262, 263, 467, 471, 420 and 120B of the Indian Penal Code.

The respondents filed an application before the High Court contending that as offences under ss. 467, 471 and 120B, I.P.C. fell within the purview of s.194 of the Code, no prosecution could be launched without the procedure, laid down in s. 195, followed. It is Common ground that no complaint as required by the mandatory provisions of s. 195 of the Code having been made, the proceedings. could not be proceeded. The High Court held that so far as the offence under ss. 467, 471 and 120B, I.P.C. were concealed as they fell within the ambit of s. 165((1)b)(ii) of the Code, no cognizance could be taken by the Magistrate without a complaint being filed. The relevant portion of s. 195(1)(b) may be extracted thus:

"195.(1) No Court shall take cognizance- xx xx xx

(b)(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate."

On the facts mentioned above, it is clear to us that in the complaint sent by the Registrar to the Inspector General of Police, offences mentioned were offences under ss. 262, 263, 467, 380, 420, and 471 but from a perusal of the recitals in the original Memorandum which formed the basis of the complaint it seems to us that the only offences which have made out would be offences Under ss. 262, 263, 380 and 420 which are obviously not covered by s. 195 of the Code.

The High Court held that the offences under ss. 467, 471 and 120B, I.P.C. even if made out could not be taken cognizance of by the trial court without a complaint under s. 195 of the Code. A perusal of the facts shows that there is not even a hint regarding forging any document or using a forged document. Taking the complaint at its face value, at the most the cases against the accused would fall within the ambit of ss. 262, 263, 380 and 420, I.P.C. which do not require a complaint under s. 195. The fact that some persons aided and abetted the detaching of the used stamps from the old files and re-using them in the other cases does not involve any process of forgery or use of a forged document.

In these circumstances, therefore, it is not necessary for us to go into the broader question as to whether if offences under ss. 467, 471 and 120B, I.P.C. are committed, the complaint could proceed or not. The law is now well- settled that where an accused commits some offences which are separate and distinct from those contained in s. 195, and section 195 will affect only the offences mentioned therein unless such offences form an integral part so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of s. 195 of the Code.

In the instant case, as already pointed out by us, on the facts narrated by the Registrar in his complaint no offence under ss. 467, 471 and 120B, I.P.C. is at all revealed and as such it is not necessary to go into the question as to what offences are connected with ss. 467, 471 and 120B and which are severable from them. The High Court was fully justified in quashing the proceedings against the accused as far as offences under ss. 467, 471 and 120B, I.P.C. were concerned, not because they were covered by s. 195 of the Code but because allegations contained in the complaint did not constitute these offences. The High Court was further fully justified in directing that other offences mentioned above did not require a complaint under s. 195 and would have to be tried.

In the view that we take it is not necessary for us to decide the broader question of law posed by the High Court, i.e., whether or not offences under ss. 467, 471 and 120B, I.P. alongwith other offences, were covered by s. 195 of the Code.

We, therefore, affirm the Judgment of the High Court and dismiss the appeals and the special leave petitions and direct that cases under sections 262, 263, 380/34 and 420/34, Indian Penal Code be tried without any complaint under section 195 of the Code.

H.S.K. Appeals & Petitions dismissed.