

Gopalakrishna Menon And Another vs D. Raja Reddy And Another on 5 September, 1983

Equivalent citations: 1983 AIR 1053, 1983 SCR (3) 836, AIR 1983 SUPREME COURT 1053, 1983 (4) SCC 240, (1983) 2 APLJ 37.1, 1983 CRILR(SC MAH GUJ) 449, 1983 2 CRI LC 527, 1983 CRI APP R (SC) 421, 1983 ALLCRIR 450, 1983 SCC(CRI) 822, (1984) KER LT 6, (1983) 2 CRIMES 584, (1983) ALL WC 827

Author: Misra Rangnath

Bench: Misra Rangnath, D.A. Desai

PETITIONER:

GOPALAKRISHNA MENON AND ANOTHER

Vs.

RESPONDENT:

D. RAJA REDDY AND ANOTHER

DATE OF JUDGMENT 05/09/1983

BENCH:

MISRA RANGNATH

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MISRA RANGNATH

DESAI, D.A.

CITATION:

1983 AIR 1053

1983 SCR (3) 836

1983 SCC (4) 240

1983 SCALE (2) 236

ACT:

Code of Criminal procedure, 1973-S. 195(1)(b)(ii)-Scope of-In absence of complaint from appropriate civil court prosecution for offence punishable under s. 467 I.P.C. not sustainable.

Indian Penal Code-S. 467 read with s. 463-Scope of-offence punishable under. s. 467 is offence described in s. 463.

HEADNOTE:

The appellants filed a civil suit against the respondents for recovery of certain amount of money and

produced some original documents with the plaint. The first respondent filed a complaint against the appellants alleging forgery of his signature on one such document and thereby commission or offences punishable under sections 467 and 471 I.P.C. The appellants objected to maintainability of the criminal action and later moved the High Court for quashing the said proceedings. The appellants contended that in the absence of complaint from the civil court the prosecution was barred in view of s. 195 (1)(b)(ii) of the Code of Criminal Procedure. The High Court dismissed the application and observed that s. 463 I.P.C. cannot be construed to include s. 467.

Allowing the appeal,

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HELD: The prosecution would not be sustainable. [842 B]

Section 195(1)(b)(ii) of the Code of Criminal Procedure provides that no Court shall take cognizance of any offence described in s. 463... Of the Penal Code, when such offence is alleged to have been committed in respect of a document produced .. in a proceeding in any Court ... except on the complaint in writing of that Court. Section 463 of the Penal Code in a sense defines the offence of forgery and the offence which is made punishable under s. 467 is in respect of an offence described in s. 463. Once it is accepted that s. 463 defines forgery and s. 467 punishes forgery of a particular category, the provision in s. 195(1)(b)(ii) of the Code of Criminal Procedure would immediately be attracted and on the basis that the offence punishable under s. 467 of the Penal Code is an offence described in s. 463, in the absence of a complaint by the Court the prosecution would not be maintainable.

[839 E-G, 840 D, E, H, 841 A-B]

Patel Laljibhai Somabhai v. The State of Gujarat, [1971] Suppl. S.C.R. 834; and S. L. Goswami v. High Court of Madhya Pradesh at Jabalpur, [1979] 2 S.C.R. 385 referred to. 837

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 307 of 1983 Appeal by Special leave from the Judgment and Order dated the 8th November, 1982 of the Andhra Pradesh High Court in Criminal Miscellaneous Petition No. 1936 of 1982.

A. Subba Rao for the Appellant.

B. Kanta Rao for the Respondent.

The Judgment of the Court was delivered by RANGANATH MISRA, J.- The short question arising in this appeal by special leave is whether in the absence of necessary complaint by the Civil Court

where a money receipt alleged to have been forged was produced, prosecution for offences punishable under sections 467 and 471 read with s. 34 of the Indian Penal Code would be maintainable. The accused are the appellants and they challenge the dismissal of their application under section 482 of the Code of Criminal Procedure ('Code' for short) by the High Court of Andhra Pradesh.

The appellants are father and son respectively. They took a printing press from the 1st respondent in terms of an agreement dated December 3, 1980, with a view to carrying on the printing business. The agreement stipulated that the appellants would have to deposit Rs. 20,000 with the 1st respondent and pay Rs. 500 p.m. as also 50% of the net profits to 1st respondent. Dispute arose between the parties over the compliance of the terms of the agreement whereupon the 1st respondent filed against the appellants O.S. No. 609/81 for mandatory injunction and O.S. No. 1140/81 for recovery of damages. Appellants filed O.S. No. 358/81 for refund of Rs. 20,000 claimed to have been deposited with 1st respondent and for recovery of RS. 8638 on the footing that the same had been paid to 1st respondent by cheques and in cash. Along with their plaint appellants produced the original contract as also the money receipt for Rs. 20,000 in support of the claim in the suit. After production of the money receipt in Court, 1st respondent filed a complaint against the appellants alleging forgery of his signature on the money receipt and thereby commission of offences punishable under sections 467 and 471, I.P.C. On receiving summonses from the Court, the appellants objected to maintainability of the criminal action and later move the High Court of Andhra Pradesh for quashing the said proceedings by contending that in the absence of complaint from the Court the prosecution was barred in view of s. 195 (1) (b) (ii) of the Code. In support of this contention reliance was placed on s. 340 of the Code. The High Court referred to the provisions of ss. 463 465 467 471 and 474 of the Penal Code and observed.

"From the above provisions, It is quite manifest that the offence which is mentioned in the complaint carries greater punishment, namely, 10 years imprisonment, whereas under s. 463, I.P.C. the punishment is infinitely lesser than the one under s. 467, namely 2 years of fine or both. That apart, in a case reported in 1979 CrL. L.R. at 228, it has been held by the Gujarat High Court that the offences laid down under ss. 474 and 471, I.P.C. are distinct. In that case it was contended that a complaint by A to police under s. 474 that was in possession of forged documents with intention to use them in Court proceedings and thereafter producing documents in Court and thereby committing offence under s. 471 did not wipe out the offence under s. 474. The High Court held under these circumstances that the Magistrate can proceed with case under s. 474 against grounding the reason that s. 195 (1) (b) (ii) is not attracted.

The penal provisions as it is fairly settled ought to be interpreted very strictly and therefore on the foregoing analysis I have no hesitation in holding that s. 463 cannot be construed to include s. 467 as well and, therefore, certainly it is competent for the Magistrate to take cognizance of and try the same as it is needless to follow the case. Hence the contention on the basis of the provisions in s. 340 of the Code of Criminal Procedure fails and the same is rejected".

There is no dispute that the alleged forged document was produced in the suit brought by the appellants. Section 340 of the Code provides:

"340. (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate".

The relevant part of s. 195 referred to in s. 340 of the Code reads thus:

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

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(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, ... except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate". (underlining is ours).

If s. 195 (1) (b) (ii) is attracted to the facts of the present case, in the absence of a complaint in writing of the Civil Court where the alleged forged receipt has been produced, taking of cognizance of the offence would be bad in law and the prosecution being not maintainable, there would be absolutely no justification to harass the appellants by allowing prosecution to have a full dressed trial. Section 195 (1) (b) (ii) uses two different expressions: in regard to s. 463 of the Indian Penal Code it says, "offence described", while in regard to ss. 471 and 475 or 476 of the I.P.C. it says, "punishable". The High Court has not made any reference to s. 471 of I.P.C. while rejecting the submissions of the appellants apparently because s. 471 in terms has been mentioned in the provision. So far as s. 463 is concerned, the High Court has taken the view as we have already

indicated that "section 463 cannot be construed to include s. 467". Section 463 of the I.P.C. provides:

"463. Forgery-Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person, or to support any claim or title or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery".

It is the opening section of Chapter XVIII of the Penal Code dealing with offences relating to documents and to property marks. This opening section in a sense defines the offence of forgery. Section 467 of the Penal Code provides:

"467. Forgery of valuable security, will, etc.- Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest, or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine".

The purpose of our extracting the two sections of the Penal Code is to show the offence which is made punishable under s. 467 of the Penal Code is in respect of an offence described in s.

463. Once it is accepted that s. 463 defines forgery and s. 467 punishes forgery of a particular category, the provision in s. 195 (1) (b) (ii) of the Code would immediately be attracted and on the basis that the offence punishable under s. 467 of the Penal Code is an offence described in s. 463, in the absence of a complaint by the Court the prosecution would not be maintainable. We have no doubt in our mind that the High Court took a wrong view of the matter.

We may briefly refer to two decisions of this Court. In *Patel Laljibhai Somabhai v. The State of Gujarat*,⁽¹⁾ the accused had filed a suit for recovery of certain money on the basis of a forged cheque and a private complaint had been filed before the Court of the Judicial Magistrate alleging offences under ss. 467 and 471 of the I.P.C. The appellant raised an objection that in view of s. 195 (1) (c) of the Code of Criminal Procedure cognizance of the offence could not be taken on a private complaint. The High Court upheld the order of commitment by finding that though there would be a bar for prosecution for offences punishable under ss. 467 and 471 of the I.P.C. On a private complaint, in the facts of the case that question did not arise and this Court refused to interfere by holding that the alleged offences had been committed at a time when the accused was not a party to the civil proceeding. Not the conclusion but the ratio supports our view.

In *S.L. Goswami v. High Court of Madhya Pradesh at Jabalpur*, (2) to which one of us was a party. it was held that an offence under s. 466, I.P.C. was covered by clause

(c) of s. 195 (1) of the Code and it came within the purview of the section as the offence under s. 463, I.P.C. is dealt With in s. 466, I.P.C. Section 466, I P.C., it was pointed out, was an aggravated form of forgery in that the forgery should relate to a document specified in that section. Section 466, I.P.C. was, therefore, an offence as described in s. 463, I.P.C. which was committed in relation to a record or proceeding of or in a Court of justice. What was said in the aforesaid decision in regard to the offence under s. 466, I.P.C. has full application to an offence under s; 467, I.P.C. Therefore, the ratio of the last cited decision has full application to the present case.

In view of what we have said above, the prosecution in the instant case on the basis of a private complaint and in the absence of a complaint from the appropriate civil court where the alleged fraudulent receipt has been produced, would not be sustainable. As we are of the view that if the prosecution is allowed to continue serious prejudice would be caused to the appellants and they would be called upon to face a trial which would not be sustainable, we allow this appeal and set aside the decision of the High Court and quash the complaint case filed against the appellants.

H.S.K.

Appeal allowed.