Madhya Pradesh High Court
Rajesh Sharma vs Aatik Ahmed And Others on 17 August, 2000
Equivalent citations: 2001 (1) MPHT 243
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Bench: S Pandey
ORDER S.C. Pandey, J.

1. The applicant Rajesh Sharma filed a complaint under Sections 420, 467, 468, 418, 177, 219/34 of the Indian Penal Code in the Court of Judicial Magistrate First Class, Pendra Road, on the following allegations against the non-applicant Nos. 1 to 6 and one M.R. Gayakwad, Naib-Tahsildar, Raigarh. It was alleged by the applicant that in village Sarbahara, Police Station Gorela, Tahsil Pendra Road, District Bilaspur, he possessed 2.94 acres of land. It belonged to his ancestors. There is a mango grove and old house on the land in question. Purushottam Datt Sharma son of Murlidhar was one of his ancestors who used to live in Village Sarbahara and was in possession of the aforesaid land. He was murdered 24 to 25 years prior to filing of the complaint and, thereafter, the property was managed by Teevramedh Sharma who was looking after it while he was residing at Narsinghpur. It was stated that after the death of Purushottam Datt Sharma, the properly was recorded in the name of the heirs of his brothers Shridhar Sharma and Mahendra Datt Sharma. The applicant was the heir of Shridhar Sharma who was his grant father and the father of Teevramedh Sharma. Teevramedh Sharma died in the year 1981. After his death, the applicant and the brother of the applicant's father used to manage the property. But, after the first month of 1995, nobody went to Village Sarbahara from Narsinghpur to look after the property. It is alleged that in the year 1996, the Tahsildar, Pendra Road, found the land in question lying vacant and unused. Consequently, he started the proceedings for confiscation of the same as it did not seem to belong to any one. However, it was alleged that the non-applicant No. 1, Aatik Ahmed, in order to grab the property in question, stated that this property was sold to him by Teevramedh Sharma, the father of the applicant, for a consideration of Rs. 15,000/- (Rupees Fifteen Thousand) thirty years back. However, Teevramedh Sharma died 25 years back on account of the fact that he was murdered and, therefore, the non-applicant No. 1, Aatik Ahmed could not get the property in question registered in his favour. It was alleged that the claim of the non-applicant No. 1, Aatik Ahmed regarding the ownership of the property in question was false and in order to prove his case, the non-applicant No. 1 used the good offices of Shivmangal Patel for making forged receipt and Thandaram for making a false report. It was alleged that the non-applicant No. 1 conspired with the other non-applicants Juber Ahmed, Abdul Gafoor and Babulal Gond and also with the Naib-Tahsildar M.R. Gayakwad for depriving the applicant of the property in questions. Paragraph 11 of the complaint lays down that all the accused persons including Naib-Tahsildar M.R. Gayakwad had committed offence under Sections 420, 467, 468, 418, 177, 219 of the Indian Penal Code.

2. The Trial Court, after recording the evidence of the applicant, Thakur Rajkiran Singh and Sushil Kumar Rai held that the Naib-Tahsildar M.R. Gayakwad could not be held to be guilty because he was exercising his power as a presiding officer of a Revenue Court; and whatever he did was in discharge of the duty as a judicial officer and, therefore, he would not be held to be liable for any offence in the eyes of law. The order of the Naib-Tahsildar was appealable and, therefore, there was no question of any malafide intention on the part of the Naib-Tahsildar which could be culpable or

punishable in the eyes of law. Accordingly, the Naib-Tahsildar M.R. Gayakwad was acquitted. So far as the other accused persons were concerned, they were found prima facie liable under Sections 420, 468, 177, 193, 219/34 of the Indian Penal Code and a complaint against the non- applicants was registered.

3. In revision, filed by the non-applicant Nos. 1 to 6, it was held by the Revisional Court that the non- applicants/accused persons cannot be prosecuted for the reason there was no compliance of Section 195 read with Section 340 of the Code of Criminal Procedure. It was held by the Revisional Court that the offence in question related to giving false evidence and producing forged documents before the Naib-Tahsildar and, therefore, as a Court of law, the Naib-Tahsildar could file a report regarding the offences after following the procedure under Section 340 read with Section 195 of the Code of Criminal Procedure. This was not done and, therefore, the Trial Magistrate was not competent to register the complaint against the non-applicants/accused persons. Accordingly, the revision filed by the non-applicant Nos. 1 to 6 before the Revisional Court was allowed.

4. In this revision, it has been argued on behalf of the applicant Rajesh Sharma that Section 195 of the Code of Criminal Procedure covers only offence under Section 177 of the Indian Penal Code and offences described in Section 463, 471, 475 or 476 of the Indian Penal Code. The offences punishable under Sections 420, 467, 468, 418 and 219 of the Indian Penal Code are not covered by Section 195 of the Code of Criminal Procedure. Therefore, there was no question of following the procedure under Section 195 read with Section 340 of the Code of Criminal Procedure. In view of this matter, the order of the Court below was vitiated and is liable to be set aside. It was also argued that the order passed by the Court below was interlocutory in nature and it was not liable to be interfered with in revision.

5. In response to the argument advanced by learned counsel for the applicant, learned counsel for the non-applicants argued that the order passed by the Judicial Magistrate First Class could not be said to be an interlocutory order and for this purpose, reliance was placed on the decision of the Supreme Court in the case of Rajendra Kumar Sitaram Pande and others Vs. Uttam and another, reported in AIR 1999 SC 1028, wherein Their Lordships of the Supreme Court held that even in order in those cases where the process is issued after examining the witnesses of the complainant, the accused persons are entitled to assert in revision that the complaint is liable to be dismissed and there was no prima facie case against the accused persons. Their Lordships of the Supreme Court referred to in their decisions in the case of Amar Nath and others Vs. State of Haryana and others, reported in AIR 1977 SC 2185, the case of Madhu Limaye Vs. State of Maharashtra, reported in AIR 1978 SC 47 and the case of V.C. Shukla Vs. State through C.B.I. reported in AIR 1980 SC 962. Learned counsel for the non- applicants further argued that so far as offence under Section 420 of the Indian Penal Code is concerned, there is no allegations in the complaint showing that the offence under Section 420 of the Indian Penal Code was committed by the non-applicants. It was also argued that the non-applicants are deemed to be acquitted and, therefore, this Court should not interfere with the impugned order. Further, it was argued that all the offences are in regard to proceedings before the Naib-Tahsildar and they are so intimately connected with each other that it is riot possible to severe the offence under Section 420 of the Indian Penal Code or Section 418 or 467 or 468 of the Indian Penal Code. For this reason also, this Court cannot say procedure under

Section 195 read with Section 340 of the Code of Criminal Procedure need not be followed. It has been urged relying on the decision in the case of Surjit Singh and others Vs. Balbir Singh, reported in AIR 1996 SC 1592, wherein Their Lordships of the Supreme Court referred to the case of Gopal Krishna Menon Vs. D. Raja Reddy, reported in AIR 1983 SC 1053, white holding that the offence under Section 463 of the Indian Penal Code as well as those offences which are species of the offences under Section 463 of the Indian Penal Code would covered by Section 195(1)(b)(ii) of the Code of Criminal Procedure. It was, therefore, urged that this is not a case for interference in revision; especially when the dismissal of complaint against the applicant amounts to acquittal. It was further pointed out that so far as M.R. Gayakwad, the Naib-Tahsildar is concerned, the applicant himself has not filed any revision or appeal against dismissal of complaint filed against him and, therefore, the order of the Judicial Magistrate First Class dated 12-1-1998 dismissing the complaint against him became final and could not be challenged in this revision.

6. Having heard the counsel for the parties, this Court is of the opinion that so far as offence under Section 219 of the Indian Penal Code is concerned, it has not been made out and the learned counsel for the applicant also agreed to the proposition that this offence is not made out. The allegations in the complaint show that the non-applicant No. 1, Aatik Ahmed wanted to grab the property in question which legitimately belonged to the applicant and his relatives. The essence of the complaint is that the non-applicant No. 1, Aatik Ahmed stated that he had obtained an agreement in writing from late Teevramedh Sharma, the father of the applicant, who died 25 years back after paying him Rs. 15,000/- (Rupees Fifteen Thousand), but he could not get it registered. This document together with the forged documents, showing that the non-applicant No. 1, Aatik Ahmed was paying the land revenue, were produced before the Naib-Tahsildar with the aid of all the accused persons who conspired to aid and abet the criminal designs of the non-applicant No. 1. The learned Trial Magistrate has also found that the forged documents were alleged to be used by the non-applicants in the Court of Naib-Tahsildar M.R. Gayakwad and, therefore, an offence under Section 468 of the Indian Penal Code was prima facie committed. Now, it is true that the offence under Section 468 of the Indian Penal Code is not specifically mentioned in Section 195(2) of the Code of Criminal Procedure. The essence of offence of forgery is defined in Section 463 of the Indian Penal Code. Section 464 of the Indian Penal Code prescribes what would amount to making a false document. Both these sections have to be read together. Making of a false document with an intent to cause damage or injury to public or any person or to support any claim or title or to cause a person to part with property or to enter into express or implied contract or with a view to commit fraud or that it may be committed is the essence of the offence of forgery. This is what the complainant wanted to say that the accused persons placed false evidence before the Naib-Tahsildar for the purpose of fraudulently obtaining title to the land in dispute. This would be an offence under Section 468 of the Indian Penal Code, according to the applicant. However, merely asserting that the offence is under Section 468 of the Indian Penal Code, the complainant cannot get away from his duty to prove the ingredients of Sections 463 and 464 of the Indian Penal Code. They are implicit in Section 468 of the Indian Penal Code. In the opinion of this Court, the similar view was taken in the decision in the case of Gopal Krishna Menon, AIR 1983 SC 1053 (supra), wherein Their Lordships of the Supreme Court held that offence under Section 467 of the Indian Penal Code is an offence under Section 463 thereof and this view has found further approval of the Supreme Court in the decision in the case of Surjit Singh and others, AIR 1996 SC 1592 (supra). In order to prove an offence under Section 468

of the Indian Penal Code, it would be necessary to prove that the accused persons prepared false or forged documents for being used in a Court of law with a view to obtain title to the property in question. Consequently, they intended to dupe the State Government for the purpose of recording the Bhumi-Swami rights in their favour in respect of the land in dispute. The offence under Section 468 of the Indian penal Code cannot be proved apart from proving the ingredients of Section 463- of the Indian Penal Code. This Court is of the view that the principle laid down in the decision in the case of Manoranjan Khatua Vs. State of Orissa, reported in 1990 Cr.LJ. 1583, is also attracted. The offences here could not be split out and, therefore, cognizance could not be taken without the written report of the Court. It is not disputed that the other offences like under Sections 177 and 193 of the Indian Penal Code are covered by Section 195 of the Code of Criminal Procedure. The offences under Sections 418 and 420 of the Indian Penal Code are not attracted in this case. The applicant was not "cheated" within the meaning of Section 415 of the Indian Penal Code.

The applicant had no relationship with the accused persons as required by Section 418 of the Indian Penal Code. Nor are the ingredients of Section 420 of the Indian Penal Code attracted. The applicant was not in picture and, therefore, it was not he, who was deceived by delivery of his property to the non- applicants/accused persons. In fact, ingredients of Section 420 of the Indian Penal Code did not come out as an offence from the complaint. For all these reasons, this Court is of the view that there was no mistake committed by the learned Additional Sessions Judge in allowing the revision filed by the non-applicant Nos. 1 to 6.

7. Accordingly, this revision has no force. It is hereby dismissed.

8. Criminal Revision dismissed.