Surjit Singh & Ors vs Balbir Singh on 29 February, 1996

Equivalent citations: 1996 AIR 1592, 1996 SCC (3) 533, 1996 (3) SCC 533, AIR 1996 SUPREME COURT 1592, 1996 AIR SCW 1850, (1996) 3 SCR 70 (SC), 1996 CRIAPPR(SC) 192, 1996 SCC(CRI) 521, (1996) 3 JT 363 (SC), 1996 CALCRILR 144, 1996 CRILR(SC&MP) 313, 1996 CHANDLR(CIV&CRI) 12, (1996) SC CR R 547, (1996) 2 RAJ LW 36, 1996 CRILR(SC MAH GUJ) 313, (1996) 2 CURCRIR 122, (1996) 1 EASTCRIC 782, (1996) 3 RECCRIR 240, (1996) 33 ALLCRIC 343, (1996) 2 BLJ 733, (1996) 4 BOM CR 489

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:
SURJIT SINGH & ORS.

Vs.

RESPONDENT:
BALBIR SINGH

DATE OF JUDGMENT: 29/02/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
AHMAD SAGHIR S. (J)
G.B. PATTANAIK (J)

CITATION:
1996 AIR 1592 1996 SCC (3) 533
JT 1996 (3) 363 1996 SCALE (2)865

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Question of law referred to this Bench is: whether the criminal Court is debarred from proceeding with the private complaint laid against the appellants on June 13. 1983 for offences punishable under sections 468 and 471 of Indian Penal Code [for short, the 'IPC']? The respondent had laid the complaint for offences punishable under Sections 420, 467, 468, 471 read with Section 120-B, IPC with the allegations that the appellants had conspired and fabricated an agreement dated July 26, 1978 and forged the signature of Smt. Dalip Kaur and on the basis thereof they attempted to claim retention of the possession of the remaining part of the house. The Magistrate, Amritsar had examined witnesses under Section 202 of the Code of Criminal Procedure, 1973 [for short, the 'Code'] and ordered issue of process summoning the appellants to appear on September 27, 1983. It would appear that the appellants filed civil suit for an injunction to restrain Dalip Kaur from interfering with the possession of appellants 1 to 3 and he produced the agreement dated 21 2.1984 which was said to have been executed and signed by Dalip Kaur. Thereafter, the appellants filed an application to quash the complaint on the ground of bar under section 195 of the Code. The Magistrate and on revision the Sessions Judge dismissed the same. When the revision was filed in the High Court of Punjab & Haryana, on a question of law ultimately the matter was referred to Full Bench which had answered the question against the appellants and remitted the matter to the the referring Judge. The learned single Judge in the impugned order dated August 4, 1986 has dismissed the revision. Thus this appeal by special leave.

The only question is: whether the Magistrate, 1st class at Amritsar is devoid of jurisdiction to take cognizance of the offence. Shri Markandaya, learned counsel for the appellants placing strong reliance on the judgments of this Court in Gopal Krishna Menon & Anr.v. D. Raja Reddy & Anr. [(1983) 3 SCR 836]3 and Patel Laljibhai and Somabhai v. State of Gujarat[(1971) Supp . SCR 834] contended that once the document has been produced before the Court it is the civil Court that has seining of the matter. It alone or an officer on its behalf has to lay the complaint in writing. The private complaint laid by the respondent is not maintainable. The criminal Court therefore, cannot proceed with the trial. With a view to appreciate the contention it is necessary to reiterate the scope of Section 195 of the Code which creates an embargo on the power of the Court to take cognizance of the offence.

Section 195(1) (b) (ii) reads that no court shall take cognizance of any offence described in Section 463, or punishable under Sections 471,475 or 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".

This Court in Budhu Ram V. State of Rajasthan [(1963) 3 SCR 376] considered the scope of Section 195 and held thus:

> "It will be seen on a plain grammatical construction of this provision that a complaint by the court is required where the offence is of forging or of using as genuine any document which is know or believed to be a forged document when such document is produced or given in evidence in court. It is clear therefore that it is only when the forged document is produced in Court that a complaint by the Court is required. Where, however, what is produced before the court is not the forged document itself,

> s.195(1)(c) will not apply on its terms. The reason for this, as stated by the Judicial Committee, 'is the practical common sense of the matter, for the court before which a copy of a document is produced is not really in a position to express any opinion on the genuineness of the original'. Therefore, even if the Assistant Settlement Officer is assumed to be a court within the meaning of s.195(l)(c) no complaint was necessary because the forged document itself was not produced before the Assistant Settlement Officer in this case but only a copy thereof."

In this case it was that since the copy of the document was produced Section 195 of the Code was not a bar to lay private complaint.

The purpose of imposing embargo created by section 195 was considered in Patel Laljibhai's case (supra). This Court held at pages 841-42 thus:

> "The underlying purpose of enacting s.195(1)(b) and (c) and s.476 seems to be to control the temptation on the part of the private parties considering themselves aggrieved by the offences mentioned in those sections to start criminal prosecutions on frivolous vexatious or insufficient grounds inspired by a revengeful desire to harass or spite their opponents These offences have been selected for the courts control because of their direct impact on the judicial process. It is the judicial process in other words the administration of public justice, which is the direct and immediate object or victim of these offences and it is only by misleading the courts and thereby perverting the due course of law and justice that the ultimate object of harming the private party is designed to be realized. As the party of the proceedings of the court is directly sullied by the crime the Court is considered to be the only party entitled to consider the desirability of complaining against the guilty party. The private party designed ultimately to be injured through the offence against the administration of public justice is undoubtedly entitled to move the court for persuading it to file the complaint. But such party is deprived of the general right recognised by s.190 Cr. P.C. of the aggrieved parties directly initiating the criminal proceedings. The offences about which the court alone, to the exclusion of the aggrieved private parties, is clothed with the right to complain may, therefore, be appropriately considered to be only those offences committed by a party to a proceeding in that court, the commission of which has a reasonably close nexus with the proceedings in that court so that it can, without embarking upon a completely independent and fresh inquiry, satisfactorily consider by reference principally to its records the expediency of prosecuting the delinquent party. It, therefore, appears to us to be more appropriate to adopt the strict construction of confining the prohibition contained in s.
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> 195(1)(c) only to those cases in which the offences specified therein were committed by a party to the proceeding in the character as such party."

At page 846 it was stated that:

> "Broadly speaking we are inclined to agree with the reasoning of the Allahabad Full Bench in Kushal Pal Singh case [ILR (1953) All. 804]. This in our opinion reflects the better view. The purpose and object of the Legislature in creating the bar against cognizance of private complaints in regard to the offences mentioned in s. 195(1)(b) and (c) is both to save the accused person from vexatious or baseless prosecutions inspired by feelings of vindictiveness on the part of the private complainants to harass their opponents and also to avoid confusion which is likely to arise on account of conflicts between findings of the courts in which forged documents are produced or false evidence is led and the conclusions of the criminal courts dealing with the private complaint. It is for this reason as suggested earlier, that the legislature has entrusted the court, whose proceedings had been the target of the offence of perjury to consider the expediency in the larger public interest, of a criminal trial of the guilty party."

The object thereby is to protect persons from needless harassment by prosecution for private vendetta; to preserve purity of the judicial process and unsullied administration of justice; to prevent the parties of the temptation to pre- empt the proceedings pending in a court and to pressure and desist parties from proceeding with the case. Equally when the act complained of relates to an offence, i.e., contempt of lawful authority of public servant, or against public justice or for offences relating to documents produced or given in evidence, public justice demands absolute bar of private prosecution and that power be given to the court to lay complaint under Section 340 of the Code as per the procedure prescribed therein. In Patel Laljibhai's case the main controversy was as to when the accused had become a party to the proceedings. However, after the Code came into force in 1974 replacing the earlier Code of 1898 it was omitted and so it is no longer of any relevance. It is seen that and in the absence of a complaint by this Court, prosecution was held to be not maintainable.

In Sushil Kumar v. State of Haryana [AIR 1988 SC 419] the question was when a copy of the original document is produced and a private complaint is laid on the basis of a copy of the forged agreement, whether bar of Section 195(1)(b)(ii) gets attracted. This Court had held that until the original document is produced in the court, there is no bar of Section 195 and that, therefore, the private complaint was held not barred.

In Sanmukhsingh v. The King [AIR 1950 PC 31], the Privy Council also had held that where the document in respect of which a charge of forgery had been made against the accused had not itself been produced or given in evidence in certain proceedings but on the contrary a copy of it had been produced, the absence of complaint under Section 195(1)(c) cannot operate as a bar to the trial of the accused.

It would thus be clear that for taking cognizance of an offence, the document, the foundation for forgery, if produced before the court or given in the appellants therein had filed a civil suit on the basis of a cheque dated November 22, 1963 and the civil suit had come to be dismissed on January 30, 1965. Thereafter, the private complaint was filed on November 16, 1965. In the light of those facts it has held that the respondent was a party to the proceedings in the suit and that, therefore,

the private complaint was not maintainable.

In Gopalakrishna Menon's case (supra), the facts were that the suit was laid on the basis of an agreement dated December 3, 1980 and also a receipt of even date for the recovery of the amounts on the basis of the said agreement. Along with the plaint the agreement and also the receipts were produced in the Court. Subsequently, a complaint was filed for offence under Sections 467 and 471, IPC. It was contended that Section 195(1)(b)(ii) was a bar. That was negatived by the High Court. This Court considering Sections 340 and 195 of the Code had held that as soon as it is accepted that Section 467 punishes forgery of a particular category, Section 195(1)(b)(ii) immediately gets attracted. On the basis that the offence punishable under Section 467 is an offence under Section 463 committed in the proceedings of the court evidence, the bar of taking cognizance under Section 195(1)(b)(ii) gets attracted and the criminal Court is prohibited to take cognizance of offence unless a complaint in writing is filed as per the procedure prescribed under Section 340 of the Code by or on behalf of the court. The object thereby is to preserve purity of the administration of justice and to allow the parties to adduce evidence in proof of certain documents without being compelled or intimidated to proceed with the judicial process. The bar of Section 195 is to take cognizance of the offences covered thereunder.

It is seen that in this case cognizance was taken by the criminal Court on September 27, 1983 and the original agreement appears to have been filed in the civil Court on February 9, 1984 - long after cognizance was taken by the Magistrate. It is settled law that once cognizance is taken, two courses are open to the Magistrate, namely, either to discharge the accused if the evidence does not disclose the offence or to acquit of the accused after the full trial. Unless either of the two courses is taken and orders passed, the cognizance duly taken cannot be set at nought. In this case since cognizance was already taken before filing of the document in the civil Court and the original has not been filed before cognizance was taken, the High Court was right in directing that the Magistrate is at liberty to proceed with the trial of the criminal case.

The appeal is accordingly dismissed.