Kailash Mangal vs Ramesh Chand(Dead)Th.Legal ... on 20 January, 2015

Bench: V. Gopala Gowda, R. Banumathi

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 240 OF 2015
(Arising out of SLP (CRL.) NO.1887/2011)

KAILASH MANGAL ... AP

VERSUS

RAMESH CHAND (D) TH. LEGAL REPRESENTATIVE ...RES

O R D E R

Leave granted.

2. Challenging the correctness of the judgment in Criminal Appeal No. 336-SBA of 2008 dated 14.10.2010, in and by which, the High Court of Punjab & Haryana at Chandigarh, convicted the appellant under Sections 193 and 419 of the Indian Penal Code, the appellant has preferred this appeal.

3. Brief facts in nutshell are that the appellant and the respondent are real brothers. One Surinder Kumar, who is the maternal uncle of the appellant, has filed Civil Suit No. 181 of 1987 against his sister Smt. Champa Devi and others on 01.10.1987, interalia praying for a declaration that he is the owner of a shop being No. 108, Ward 1, Old Mandi, Tohana, to the exclusion of his sister. During the pendency of the suit, Champa Devi, the mother of the appellant and the respondent passed away on 14.07.1990. Upon her demise, the appellant, who is the elder son of Champa Devi, filed an application in the civil court for bringing on record himself and the respondent along with four sisters as the legal heirs of deceased Champa Devi. While moving the application, instead of naming himself and his younger brother Ramesh Chand, it appears that the appellant has stated his name as Ramesh Chand alias Kailash Mangal i.e. showing them as one person instead of two persons. It is stated that after some time, the respondent moved an application for correcting the said mistake and the same was ordered. The suit filed by Surinder Kumar was decreed in his favour.

4. When the matter stood thus, nearly after four years of the aforesaid decree, on 15.1.1994, the respondent filed a private complaint against the appellant under Section 340 of the Cr.P.C. alleging that by filing a false affidavit before the civil court, the appellant has committed offences punishable under Sections 416, 419, 191, 192 and 193 of the IPC and also for initiation criminal proceedings against the appellant. The said private complaint was taken on file and the trial proceeded. After consideration of the evidence on record, the trial court convicted the appellant under Sections 193 and 419 of the IPC and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.300/-. Against this order, the appellant has filed appeal before the Court of Additional Sessions Judge, Fatehabad, which set aside the conviction of the appellant on the ground that the private complaint is not maintainable. Aggrieved by the acquittal of the appellant, the respondent has filed an appeal before the High Court of Punjab & Haryana at Chandigarh, which vide impugned judgment, allowed the appeal and set aside the order of acquittal passed by the first appellate court and restored the judgment of conviction of the appellant under Sections 193 and 419 of the IPC. The High Court directed that the appellant be released on probation on furnishing personal bonds in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) with one surety of the like amount to the satisfaction of the trial court, subject to certain terms and conditions.

5. We have heard learned counsel for the appellant and the learned counsel for the respondent.

6. The Main contention urged by the learned counsel for the appellant is that so far as the offences committed in relation to the proceedings before the civil court, in terms of Section 195(1)(b)(i) of the Code of Criminal Procedure, (for short 'Cr.P.C') for the offences punishable under Sections 193 to 196,199, 200 to 211 and 228 of the IPC, is concerned the court shall take cognizance only on the complaint filed in writing of that court or such officer of the court, who has been duly authorised in writing in this behalf. The learned counsel further submitted that the private complaint filed by the respondent is not maintainable and this aspect of the matter was not properly appreciated by the High Court. In support of his contention, the learned counsel has placed reliance upon a judgment of this Court in the case of C. Muniappan v. State of T.N., (2010) 9 SCC 567.

7. The point for consideration is whether the conviction of the appellant under Sections 193 and 419 of the IPC in the case initiated on the private complaint of the respondent-complainant is sustainable or not.

8. Section 195 (1)(b)(ii) of the Cr.P.C. bars the court from taking cognizance of any offence punishable under Section 193 of the IPC and other offences indicated thereon, unless, there is a written complaint made by the concerned court. The object of this Section is to stop private persons from prosecuting the persons as amongst all wreaking vengeance the offence must have been committed in relation to any proceeding in the trial court. Sections 191 and 192 of the IPC are the Sections dealing with offences of giving false evidence or fabricating false evidence. Punishment for intentionally giving false evidence in any stage of judicial proceeding is provided under Section 193 of the IPC. In the case at hand, the offence is alleged to have been committed by the appellant-accused under Sections 193 IPC and 419 of the IPC. For an offence punishable under Section 193 of the IPC, the proceedings are to be initiated in accordance with Section 195 (1)(b)(ii) of the Cr.P.C. The magistrate could not have taken cognizance of the offence punishable under Section

193 of the IPC on a private complaint. For the alleged filing of false affidavit in the civil suit, the appellant was charged for the offence punishable under Section 193 of the IPC. If any offence was committed under Section 193 of the IPC, the respondent-complainant ought to have moved the concerned court praying for initiation of appropriate proceedings against the appellant. The magistrate could not have taken cognizance of the said offence punishable under Section 193 of the IPC.

9. We may usefully refer to the judgment of this Court reported in the case of C. Muniappan (supra) in which case the scope of Section 195(1)(a)(i) of the Cr.P.C was discussed at length. Relevant para nos. 28 to 33 are extracted hereunder:

> "28. Section 195(a)(i) Cr.P.C bars the court from taking cognizance of any offence punishable under Section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 Cr.PC that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in the Cr.PC like sections 196 and 198 do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those Sections. (vide Govind Mehta v. State of Bihar, (1971) 3 SCC 329; Patel Laljibhai Somabhai v. State of Gujarat, (1971) 2 SCC 376; Surjit Singh & Ors. v. Balbir Singh, (1996) 3 SCC 533; State of Punjab v. Raj Singh, (1998) 2 SCC 391; K. Venqadachalam v. K.C. Palanisamy,(2005) 7 SCC 352; and Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370).
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> 29. The test of whether there is evasion or non-compliance of Section 195 Cr.PC or not, is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. In Basir-ul-Haq & Ors. v. The State of West Bengal, AIR 1953 SC 293; and Durgacharan Naik & Ors v. State of Orissa, AIR 1966 SC 1775, this Court held that the provisions of this Section cannot be evaded by describing the offence as one being punishable under some other sections of IPC, though in truth and substance, the offence falls in a category mentioned in Section 195 Cr.PC. Thus, cognizance of such an offence cannot be taken by mis-describing it or by putting a wrong label on it.

30. In M.S. Ahlawat v. State of Haryana & Anr., AIR 2000 SC 168, this Court considered the matter at length and held as under :

"5....Provisions of Section 195 CrPC are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section."

(Emphasis added)

31. In Sachida Nand Singh & Anr. v. State of Bihar & Anr., (1998) 2 SCC 493, this Court while dealing with this issue observed as under :

"7. ..Section 190 of the Code empowers "any magistrate of the first class" to take cognizance of "any offence" upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the magistrate, and the general right of a person to move the court with a complaint to that extent curtailed. It is a well- recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise."

(Emphasis supplied)

32. In Daulat Ram v. State of Punjab, AIR 1962 SC 1206, this Court considered the nature of the provisions of Section 195 Cr.PC. In the said case, cognizance had been taken on the police report by the Magistrate and the appellant therein had been tried and convicted, though the concerned public servant, the Tahsildar had not filed any complaint. This Court held as under :

"4.....The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant, namely, the Tahsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained.

5.....The appeal is, therefore, allowed and the conviction of the appellant and the sentence passed on him are set aside."

(Emphasis added)

33. Thus, in view of the above, the law can be summarized to the effect that there must be a complaint by the pubic servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 Cr.PC are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction." Applying the above decision, the conviction of the appellant under Sections 193 and 419 of the IPC is not sustainable. 10 While restoring the conviction

of the appellant under Section 193 of the IPC, the High Court has relied upon a decision of the Constitution Bench of this Court in the case of Iqbal Singh Marwah vs. Meenakshi Marwah, (2005) 4 SCC 370. A Constitution Bench of this Court in the case of Iqbal Singh Marwah's case (supra) held that the protection engrafted under Section 195 (i)(b)(ii) of the Cr.P.C. would be attracted only when the offence enumerated in the said provisions have been committed with respect to a document after it had been produced or given in evidence in proceedings in any Court, i.e. during the time when the document was in custodia legis. Where the forgery was committed before the document was filed in the Court, the High Court was held not justified in quashing the prosecution of the accused under Sections 467,468,471,472 and 477-A of the IPC on the ground that the complaint was barred by the provisions of Section 195 (i)(b)(ii) of the Cr.P.C. Section 195(i)(b)(ii) of the Cr.P.C. would be attracted only when the offences enumerated in the provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodia legis.

11. In the instant case, the false affidavit alleged to have been filed by the appellant was in a proceeding pending before the civil court and the offence falls under Section of the 193 of the IPC and the proceeding ought to have been initiated on the complaint in writing by that Court under Section 195 (1)(b)(i)of the IPC. Since the offence is said to have been committed in relation to or in a proceeding in a civil court, the case of Iqbal Singh Marwah (supra) is not applicable to the instant case.

12. Learned counsel for the appellant submitted that even on facts, the offence under Section 193 of the IPC is not attracted. It was submitted that the appellant has given instruction to the advocate's clerk who, in turn, had prepared the affidavit and filed the same in the court mistakenly stating the name of the applicant as Ramesh Chand alias Kailash Mangal.

13. After carefully considering the material on record, the rival legal contention and the facts and circumstances of the case, we do not find any reason to disbelieve the explanation put forth by the appellant. We are of the considered view that such a bona fide mistake committed in the course of the proceedings in a court may not attract Section 193 of the IPC. More so, in the peculiar facts and circumstances of the instant case, when the civil suit filed by Surinder Kumar is said to have been decreed in his favour against which the defendants therein had not chosen to file any appeal, in our considered view, the essential ingredients of Sections 193 and 419 of the IPC are not attracted. Even on facts also, the aforesaid sections are not applicable. Further, it is also to be pointed out that, during the pendency of this appeal, the respondent-complainant died and in his absence, his legal heirs are presently contesting the instant appeal.

14. The private complaint filed by the respondent for the offences allegedly committed under Section 193 of the Code is not maintainable as the same is vitiated on account of non-compliance of the mandatory provision of Section 195(1)(b)(i) of the Cr.P.C. Therefore, the conviction of the appellant under Sections 193 and 419 of the IPC is set aside and the appeal is allowed.

.....J. (V. GOPALA GOWDA) .....J. (R. BANUMATHI) NEW DELHI, JANUARY 20, 2015 ITEM NO.7 COURT NO.12 SECTION IIB S U P R E M E C O U R T O F I N D I A RECORD OF

PROCEEDINGS Petition(s) for Special Leave to Appeal (Crl.) No(s). 1887/2011 (Arising out of impugned final judgment and order dated 14/10/2010 in CRLA No. 336/2008 passed by the High Court Of Punjab & Haryana At Chandigarh) KAILASH MANGAL Petitioner(s) VERSUS RAMESH CHAND(DEAD)TH.LEGAL REPRESENTATIV Respondent(s) (with office report) (For final disposal) Date : 20/01/2015 This petition was called on for hearing today. CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA HON'BLE MRS. JUSTICE R. BANUMATHI For Petitioner(s) Mr. Sandeep Narain, Adv.

For M/s. S. Narain & Co.

For Respondent(s) Mr. Pardeep Gupta, Adv.

Ms. Mansi Gupta, Adv.

Ms. Aarti S., Adv.

Dr. (Mrs.) Vipin Gupta,Adv.

UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeal is allowed in terms of the signed order. Pending application(s), if any, stands disposed of.

(VINOD KR.JHA) COURT MASTER

(MALA KUMARI SHARMA) COURT MASTER

(Signed order is placed on the file)