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IN THE HIGH COURT OF KARNATAKA AT BENGALURU
BEFORE THE HON'BLE MR. JUSTICE H.P. SANDESH
CRIMINAL REVISION PETITION NO.692/2019; 11 MARCH, 2022
NARENDRA PRASAD P. v. N. SUJATHA AND ANR.

Petitioner by Sri S.G. Bhagavan, Advocate; Respondents by Sri M.T. Nanaiah, Sr. Counsel for Sri N.R. Girish, Advocate for R1; Sri Rajaram Suryambail, Advocate for R2

ORDER

This Criminal Revision Petition is filed praying this Court to set aside the order dated 06.02.2019 passed by the Court of Principal I Civil Judge and JMFC, Mysuru in P.C.No.1918/2018, restore the same and direct the Court to proceed with the matter in accordance with law.

2. The factual matrix of the case of the prosecution is that on 03.03.2010, the petitioner filed O.S.No.138/2010 in the Court of the II Additional Senior Civil Judge, Mysuru against the respondent No.1 and three others for declaration of title in respect of the land bearing Sy.No.8/2, Martikhyathanahalli, Jayapura Hobli, Mysuru Taluk measuring 20 guntas in extent.

3. The petitioner claims that he is the legal heir of deceased M. Puttegowda as his son. His grandson is Aditya Jagannath. The respondent No.1 claimed in the said suit that she is the foster daughter of M. Puttegowda and further claims that deceased M. Puttegowda has executed a Will dated 07.02.2003 bequeathing the property in question to her and therefore, she is the owner. The Trial Court has framed the issue as to whether she has proved that M. Puttegowda has bequeathed the suit property in her favour as per the said Will. The respondent No.1 claims that Will was executed on 07.02.2003 in the presence of the witnesses before the competent Sub-Registrar and the said Will is produced and marked as Ex.D3. She further claims that Ex.D3-Will was got registered four years after the death of M. Puttegowda and she does not know how in Ex.D3, who wrote 'erased' and as to why it is so done. The said Will was presented for registration on 13.03.2008 and the signature of Ramu is removed by ink after registration.

4. The Trial Court decreed the suit and an appeal was filed and the same was also dismissed. The Appellate Court also observed regarding the evidence of respondent No.2, wherein it is observed that it is necessary to note that on page No.4 of the said Will, at the bottom, there has been erasures with a white paint and the Sub-Registrar has signed on the same. Evidently, none of the pages of the Will bear any seal of the Sub-Registrar. It is evident that the endorsement of the Sub-Registrar are on the additional sheets and there cannot be any doubt that the erasure was by D.W.3. It is further observed that D.W.3 had no business to erase or manipulate the contents of the Will, which was presented to him for registration and he could not have meddled with the signature of the attesting witnesses.

5. Hence, in the revision petition, the petitioner has contended that the first respondent being legally bound by an oath to state the truth, has made a statement in O.S.No.138/2010 as defendant No.1 pertaining to the Will dated 07.02.2003, marked as

Ex.D3 knowing to be false and thereby has given false evidence falling within the purview of Section 191 of Indian Penal Code punishable under Section 193 of the Indian Penal Code. Besides that, the first respondent by fabricating the said document i.e., Will purported to have been executed by M. Puttegowda on 07.02.2003 containing a false statement that he has bequeathed the property in question. The said acts were done not when it was in custodia legis but, before it was produced in the Court and marked as an exhibit. Hence, the revision petitioner has contended that the Trial Court has gravely erred in relying on the dictum in the case of **SH NARENDRA KUMAR SRINIVAS VS. THE STATE OF BIHAR** reported in **(2019) 3 SCC 318** without application of judicial and judicious mind, as it ought to have done, by applying its judicial and judicious mind.

6. The learned counsel for the revision petitioner would further contend that the Trial Court ought to have analyzed the fact by applying its judicial and judicious mind to decipher whether the facts in that case are apposite and applicable to the present one, wherein Ex.D3 was forged and fabricated not when it was in *custodia legis* but, earlier and then produced in the Court. It ought to have found so and held that the law laid down in **SACHIDA NAND SINGH VS. STATE OF BIHAR** reported in **(1998) SCC 493** and brought to the notice of this Court paragraph Nos.23 and 24.

7. The learned counsel also relied upon the judgment of the Constitution Bench of the Apex Court in **IQBAL SINGH MARWAH VS. MEENAKSHI MARWAH** reported in **AIR 2005 SC 2119** and brought to the notice of this Court paragraph Nos.25 and 26. The counsel referring this judgment would vehemently contend that the law laid down in the said judgment and the factual matrix stated in it are apposite and squarely applicable to the facts on hand. Hence, the impugned order passed by the Trial Court in dismissing the complaint suffers from incorrectness, illegality and impropriety. The counsel also would vehemently contend that the Trial Court has committed an error in dismissing the complaint.

8. Per contra, learned counsel appearing for the respondents would vehemently contend that the private complaint is not supported by any affidavit and the counsel relying upon the judgment of **MRS. PRIYANKA SRIVASTAVA AND ANOTHER V. STATE OF UP AND OTHERS** reported in **2015 CRI.L.J. 2396** would vehemently contend that, in the absence of affidavit, the Court cannot entertain the complaint as laid down in the judgment of the Apex Court in the said case.

9. The other contention of the learned counsel for the respondents is that there was a delay in lodging the complaint since, the Will was produced in the suit in the year 2012 and complaint is filed in the year 2018. When such being the inordinate delay in filing the complaint, the Trial Court has rightly rejected the complaint.

10. In reply to the arguments of the learned counsel for the respondents, the learned counsel for the petitioner would submit that, in the complaint in paragraph No.21, the petitioner has categorically stated as to when the cause of action arose for filing the private complaint and the details are given in paragraph No.21(a) and therefore, the complaint is well within time. It is also stated therein that, since the matter in dispute was pending before the said Court, the complainant refrained from lodging the complaint before any other Court. Hence, there was no delay in lodging the complaint.

11. Having heard the respective counsel and also on perusal of the material on record, the points that would arise for consideration of this Court are:

(i) Whether the order passed by the learned Magistrate in dismissing the complaint suffers from its legality, correctness and nonexercising of jurisdiction, as contended by the learned counsel for the petitioner?

(ii) What order?

Point No.(i)

12. Having heard the respective counsel and also on perusal of the material on record, this Court would like to extract the order of the Trial Court which is impugned herein:

“ORDER

Complaint filed against accused for giving false evidence on the basis of forged documents. Complainant alleged that accused No.1 produced forged Will in evidence, hence accused No.1 committed an offence punishable U/s 193 of IPC. Accused No.2 to help accused forged Will, hence accused Nos.1 and 2 committed an offence punishable U/s 193, 467 r/w. 34 IPC. Section 340 Cr.P.C. describes who can take cognizance for the offence punishable U/s 195 of IPC. When document alleged as forged, if it is not produced in Court and not admitted in evidence, then any party can file complaint. Once forged document admitted in evidence, then except the Court in which it is produced, no other person can file the complaint for the offence punishable U/s 467 of IPC. Private complaint is not maintainable with respect to offence punishable U/s 193 of IPC. This is also held by Hon'ble Supreme Court in Crl. Appeal No.211/2019 between Sh. Narendra Kumar Srivastava V/s The State of Bihar, hence following,

ORDER

Complaint dismissed, as this Court cannot take cognizance on the basis of private complaint”.

13. Having perused the records, it is seen that private complaint is filed before the Trial Court against the respondents herein making an allegation against them, particularly in paragraph No.7 with reference to the Will marked as Ex.D3 i.e., the accused No.1 i.e., defendant No.1 has further deposed on oath that pursuant to the endorsement as per Ex.D3(a), Ex.D3 is registered. She has admitted that at page No.4 of the Will, the writing is 'erased' and that she does not know as to why it is so done. She has also stated earlier on oath that about four years after M. Puttegowda's demise, she went to the registration office and had Ex.D3 is registered. Further, the allegation in the complaint is that, while registering the document, the same was 'erased' and in the cross-examination of D.W.3, who is accused No.2 categorically admitted that the Will was presented for registration on 13.03.2008 and further admitted that, Ex.D3 is the original Will, in which the signature of one Ramu is removed by white ink after registration. Hence, private complaint is filed invoking the offences punishable under Sections 191 of IPC punishable under Section 193 thereof and Section 467 read with Section 34 of IPC.

14. Having perused the contents of the complaint, it is clear that tampering of document was done outside the Court at the time of registration of the document and the same was not done in the Court proceedings and the only allegation is that, forged document has

been used in the Court proceedings.

15. The learned counsel for the petitioner also relied upon the judgment of the Apex Court in ***IQBAL SINGH MARWAH AND ANOTHERS V. MEENAKSHI MARWAH AND ANOTHER*** reported in **AIR 2005 SC 2119**, wherein it is categorically held that for attracting Section 195(1)(b)(ii), offences enumerated in Section must be committed during time document was in custodia legis and Section 195 is not penal provision. The rule of strict construction does not apply including documents forged prior to their submission in Court and Section 195 would render victim of offence remedyless. The Apex Court also considering the similar allegations and exercising the powers in paragraph Nos.25 and 26 has discussed with regard to Section 195(1)(b)(ii) which reads as hereunder:

“25. In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii), Cr.P.C. would be attracted only when the offences enumerated in the said provisions have been committed with respect to a document after it has been produced or given in evidence in a proceedings in any Court i.e., during the time when the document was in custodia legis.

26. In the present case, the Will has been produced in the Court subsequently. It is nobody’s case that any offence as enumerated in Section 195(b)(ii) was committed in respect to the said Will after it had been produced or filed in the Court of District Judge. Therefore, the bar created by Section 195(1)(b)(ii), Cr.P.C. would not come into play and there is no embargo on the power of the Court to take cognizance of the offence on the basis of the complaint filed by the respondents. The view taken by the learned Additional Sessions Judge and the High Court is perfectly correct and calls for no interference.”

Hence, it is the very contention of the learned counsel for the petitioner that the Magistrate has not exercised his jurisdiction to entertain the complaint, which is nothing but nonexercise of jurisdiction by the Magistrate. The principles laid down in the judgment is aptly applicable to the case on hand since, the factual aspects of the case on hand and also the facts and circumstances in the judgment of the Apex Court are one and the same. Hence, it requires interference of this Court.

16. Learned counsel appearing for the respondents mainly contend that the private complaint is not supported by any affidavit and relied upon the judgment of the ***Srivastava’s*** Case. But, here is a case where the learned Magistrate has not exercised the jurisdiction in coming to the conclusion that the Court cannot take cognizance based on the private complaint. The very approach of the Trial Court is very erroneous and the Apex Court in ***Iqbal Singh’s*** case in its judgment in paragraph No.26 has rightly held that it is nobody’s case that any offence as enumerated in Section 195(b)(ii) was committed in respect to the said Will after it had been produced or filed in the Court of District Judge. Therefore, the bar created by Section 195(1)(b)(ii) Cr.P.C. would not come into play and there is embargo on the power of the Court to take cognizance of the offence on the basis of the complaint filed by the respondents. The view taken by the learned Additional Sessions Judge and the High Court is perfectly correct and calls for no interference.

17. In the case on hand, the Magistrate has not exercised his jurisdiction in entertaining the complaint, instead committed an error in passing the order that the Court cannot take cognizance based on the private complaint. The material on record would disclose that

the manipulation and erasing of the same was done outside the Court and not in the Court proceedings and the only allegation is that the said document has been placed before the Court and used the forged document in the Court proceedings and it is not the case of the complainant that the offence was committed in the Court proceedings. Hence, there is no bar to the learned Magistrate to entertain the complaint and hence, the very approach of the Trial Court is erroneous.

18. The contention of the learned counsel for the respondents that the judgment of **Srivastava's** case is applicable to the case on hand cannot be entertained at this stage since, the same is with regard to abuse of powers by filing private complaint and that is not the ground invoked to reject the complaint and the learned Magistrate has given other reasons which I have already discussed in detail supra that the private complaint cannot be entertained. The same is not dismissed on the ground of non-filing of affidavit.

19. The other contention of the learned counsel for the respondents is that there was a delay in lodging the complaint since the Will was produced in the suit in the year 2012 and the complaint was filed in 2018. However, the complainant in his complaint in paragraph No.21(A) has made it clear as to when the cause of action arose to file the private complaint. When such being the case and no doubt, the Will was produced in the suit in the year 2012, the conclusion was reached in 2018 and by filing a private complaint given the reason in the said complaint for the delay. Hence, the very contention that there was a delay in filing the complaint also cannot be accepted.

20. Having considered the material on record and also the order passed by the learned Magistrate, it is not in dispute that the learned Magistrate has not exercised his jurisdiction by entertaining the complaint and instead, erroneously comes to the conclusion that he is not having jurisdiction to take cognizance based on the private complaint and failed to take note of the allegation made in the complaint in detail while filing the same, wherein specific allegation is made that the forgery of document has taken place outside the Court and not within the Court and only made use of the forged document in the Court proceedings. Hence, the private complaint is maintainable and the Trial Court also lost sight of the factual aspects of the case and therefore, it requires interference of this Court by exercising the revisional powers.

Point No.(ii)

21. In view of the discussions made above, I pass the following:

ORDER

(i) The Criminal Revision Petition is allowed.

(ii) The impugned order dated 06.02.2019 passed by the Court of Principal I Civil Judge and JMFC, Mysuru in P.C.No.1918/2018 is hereby set aside. The matter is remanded to the Trial Court to consider the matter in accordance with law.

(iii) The petitioner is given liberty to file an affidavit before the Trial Court in view of the principles laid down in **Srivastava's** case.