

Court No. - 38

Case :- CRIMINAL REVISION No. - 185 of 2023

Revisionist :- Vishwanath

Opposite Party :- State Of U.P. And 2 Others

Counsel for Revisionist :- Ganesh Kumar

Counsel for Opposite Party :- Alok Singh,G.A.,Phool Chandra
Singh,Sumitra Singh

Hon'ble Surendra Singh-I,J.

This criminal revision has been filed for challenging the impugned judgement and order dated 20.10.2022 passed by the Civil Judge (Senior Division), FTC, Basti in Criminal Misc. Application No.462/2012/2022 (Vishwanath vs. Shivnath), under Section 156 (3) Cr.P.C., Police Station Kotwali, District Basti.

2. By the impugned order, trial Court has rejected the application of the revisionist filed under Section 156 (3) Cr.P.C. for directing the Station House Officer, Police Station Kotwali, District Basti to register and investigate the criminal case against the opposite party No.2.

3. Learned counsel for the revisionist submitted that revisionist has filed an application under Section 156 (3) Cr.P.C. alleging that his younger brother, namely, Shivnath (opposite party No.2) committed forgery and obtained the registered will deed by his father-Drigpal on 16.05.1994. He further submitted that revisionist had filed Civil Suit before the Civil Judge (Senior Division), Basti, which was registered as Suit No.202 of 1995. In the aforesaid suit, revisionist had challenged the will deed dated 16.05.1994, which was executed in favour of opposite party No.2 (Shivnath). This suit has been decreed in favour of the revisionist vide order dated 04.04.1995 and will deed executed in favour of the opposite party No.2 has been cancelled. After ten months of the decree of the aforesaid suit, opposite party No.2 instituted Original Suit No.127 of 1995 for cancellation of the

aforesaid order dated 04.04.1995 passed in Original Suit No.202 of 1995. The aforesaid suit instituted by the opposite party no.2 was rejected by Civil Judge (Senior Division), Basti on 25.01.1997. Against the order dated 25.01.1997 passed by Civil Judge (Senior Division), opposite party No.2 filed revision i.e. Revision No.23 of 1997 before District Judge, Basti, which was also rejected vide order dated 12.11.1998. Against the aforesaid order of the Revisional Court, opposite party No.2 also filed a writ petitioner bearing Writ-C No.189 of 1999 before this Hon'ble Court, which was dismissed on merit vide order dated 08.01.1999. The opposite party No.2 after concealment of earlier order passed by competent Court cancelling the will deed, filed mutation proceedings with false affidavit and forged cancelled will dated 16.05.1994 before Tehsildar-Sadar, District Basti on the basis of aforesaid affidavit and will deed, the Court concerned passed order in favour of opposite party No.2 on 23.07.2007 and directed the Revenue Authority to record the name of opposite party No.2 in place of his father-Digpal on the basis of aforesaid will deed. After knowledge of the aforesaid order dated 23.07.2007, the revisionist filed recall application along with relevant details, Tahsildar, Sadar, District Basti vide order dated 04.02.2009 allowed the recall application of the revisionist and directed to record the name of revisionist and his real brother in place of their father in revenue record. Against the aforesaid order, opposite party No.2 also filed an appeal before the Sub Divisional Magistrate, Sadar, Basti under Section 210 of Land Revenue Act, which was rejected vide order dated 30.03.2010. Subsequently, the opposite party No.2 concealing the earlier proceedings initiated before the authority concerned, instituted the further mutation proceedings under Section 34 of Land Revenue Act 1901 for recording his name over the property of his father, but it was rejected vide order dated 06.09.2022.

4. Learned counsel for the revisionist has submitted that from the averments made in the application under Section 156 (3) Cr.P.C. and affidavit filed in support thereof, *prima facie* offence under Sections 420, 467, 478 I.P.C. was made out against the opposite party No.2, but without considering the facts and evidence given therein, Magistrate concerned

illegally rejected the application of the revisionist filed under Section 156 (3) Cr.P.C. and the same is liable to be quashed.

5. Per contra, learned counsel for the opposite party No.2 submitted that Digpal (father of the revisionist and opposite party No.2) was a Government Employee and has four sons, namely, Hanuman, Balram, Vishwanath (revisionist) and Shivnath (opposite party No.2). All three sons except Shivnath got good Government Service/Job, since opposite party No.2 was looking after him after retirement of Drigpal (father of the revisionist and opposite party No.2), who executed registered will dated 17.05.1994 in his favour. The aforesaid will has not been cancelled or set aside by any Court. By filing the application under Section 156 (3) Cr.P.C., the revisionist wants to lodge FIR in a matter which is purely in civil nature, such act is not permissible under the law.

6. Learned counsel for the opposite party Nos.2 and 3 has placed reliance on the following judgements of the Hon'ble Apex Court:-

(i) **All Cargo Movers (I) Pvt. Ltd. & Others vs. Dhanesh Badarmal Jain & Another:** (2007) 14 SCC 776.

(ii) **State of Maharashtra vs. Sayed Mohammed Masood & Another:** (2009) 8 SCC 787.

(iii) **Mohammed Ibrahim And Others vs. State of Bihar And Another:** (2009) 8 SCC 751.

7. Heard Sri Ganesh Kumar, learned counsel for the revisionist, learned A.G.A. for the State and Sri Phool Chandra Singh, learned counsel for opposite party No.2 and 3.

8. From the perusal of the impugned order, it is revealed that trial Court has rejected the application of the revisionist filed under Section 156 (3) Cr.P.C. on the ground that in his application, revisionist/applicant has prayed for lodging FIR against the opposite party Nos.2 and 3 for fraud and forgery. Although the disputed will dated 16.05.1994 was cancelled by the Civil Judge (Senior Division), Basti, but opposite party Nos.2 and 3 by filing false affidavit and aforesaid forged will in the Court of Tehsildar, Sadar, District Basti, vide order dated 04.02.2009 obtained their name mutated in the revenue record.

9. In the impugned order, trial Court has mentioned the registration of FIR regarding **filing of forged documents in a Court proceedings is barred under Section 195 (1) (b) (i) Cr.P.C.** The trial Court has given reason that for the alleged offences only a complaint case can be instituted by the Court, in whose judicial proceedings, false affidavit or forged documents have been filed, therefore, for the alleged offences no order for registration of FIR under Section 156 (3) Cr.P.C. could be passed. The provision which bars registration of FIR for an offence of forgery committed in a Court proceedings is as follows:-

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.---

(1) No Court shall take cognizance -

(a)(i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or other public servant to whom he is administratively subordinate;

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(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, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.] [Substituted by Act 2 of 2006, Section 3 for "except on the complaint in writing of that Court, of of some other Court to which that Court is subordinate”

10. Section 195 (I) (b) bars the Court taking cognizance of an offence, in which, forgery has been committed in a documents filed in case pending in any Civil, Criminal or Revenue Court, if such forgery has been made in any

Court proceedings, then the concerned Court should file a complaint as provided under Section 340 Cr.P.C.

11. From the perusal of averments made in the application under Section 156 (3) Cr.P.C., it transpires that alleged forgery in affidavit and will deed was not done while they were already been filed in the case pending in different Courts. The alleged false affidavit or forged document were prepared out side the Court and same has been filed in the judicial proceedings in a case pending in a Court. Thus, the bar against taking cognizance of a criminal case is not applicable in the facts and circumstances given in the application under Section 156 (3) Cr.P.C.

12. The Hon'ble Apex Court has held in paragraph nos.7, 8, 9 and 13 of the judgement in **Sachida Nand Singh vs. State of Bihar: (1998) 2 SCC 493**, condition necessary for application of the bar under Section 195 (1) (B) Cr.P.C., which is as follows :-

7. Even if the clause is capable of two interpretations we are inclined to choose the narrower interpretation for obvious reasons. 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 is 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 (Abdul Waheed Khan v. Bhawani [AIR 1966 SC 1718 : (1966) 3 SCR 617]).

8. That apart it is difficult to interpret Section 195(1)(b)(ii) as containing a bar against initiation of prosecution proceedings merely because the document concerned was produced in a court albeit the act of forgery was perpetrated prior to its production in the Court. Any such construction is likely to ensue unsavoury consequences. For instance, if rank forgery of a valuable document is detected and the forgerer is sure that he would imminently be embroiled in prosecution proceedings he can simply get that document produced in any long-drawn litigation which was either instituted by himself or somebody else who can be influenced by him and thereby pre-empt the prosecution for the entire long period of pendency of

that litigation. It is a settled proposition that if the language of a legislation is capable of more than one interpretation, the one which is capable of causing mischievous consequences should be averted. Quoting from Gill v. Donald Humberstone & Co. Ltd. [(1963) 1 WLR 929 : (1963) 3 All ER 1803] Maxwell has stated in his treatise (Interpretation of Statutes, 12th Edn., p. 105) that “if the language is capable of more than one interpretation we ought to discard the more natural meaning if it leads to unreasonable result and adopt that interpretation which leads to a reasonably practicable result”. The clause which we are now considering contains enough indication to show that the more natural meaning is that which leans in favour of a strict construction, and hence the aforesaid observation is eminently applicable here.

9. As Section 340(1) of the Code has an interlink with Section 195(1)(b) it is necessary to refer to that sub-section in the present context. The said sub-section reads as follows:

“340. 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 first 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.”

13. The three-Judge Bench of this Court in Patel Laljibhai Somabhai case [(1971) 2 SCC 376 : 1971 SCC (Cri) 548 : AIR 1971 SC 1935] has interpreted the corresponding section in the old Code, [Section 195(1)(c)] in almost the same manner as indicated above. It is advantageous in this context to extract clause (c) of Section 195(1) of the old Code:

“195. (1)(c) No Court shall take cognizance.—

of any offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such

proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.”

(emphasis supplied)

The issue involved in Patel Laljibhai Somabhai case [(1971) 2 SCC 376 : 1971 SCC (Cri) 548 : AIR 1971 SC 1935] related to the applicability of that sub-section to a case where forged document was produced in a suit by a party thereto, and subsequently a prosecution was launched against him for offences under Sections 467 and 471 of IPC through a private complaint. The ratio of the decision therein is the following: (SCC Headnote)

“The offences about which the court alone 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 be more appropriate to adopt the strict construction of confirming the prohibition contained in Section 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.”

13. Considering the law laid down by the Hon’ble Apex Court in **Sachida Nand Singh (supra)**, it is obvious that Magistrate has wrongly held that **Section 195 (1) (b) Cr.P.C.** bars registration of FIR even in a case where alleged forgery has been committed in the document out side the Court and thereafter, it has been filed in a judicial proceedings in a case pending in a Court.

14. Apart from this **Section 195 (1) (b) Cr.P.C.**, imposes no bar on registration of a criminal case relating to such forge documents, it merely bars that the Magistrate shall not take cognizance of an offence regarding such forged document unless the Court, in which, forgery has been committed, filed a complaint case in accordance with the provision of **Section 340 Cr.P.C.** The Magistrate has not discussed or given any other reason for rejecting the application filed under **Section 156 (3) Cr.P.C.** and also has not considered the other point raised in the application for registering a criminal case regarding alleged forged affidavit and false will.

15. From the above discussion, I am of the view that while passing the impugned order, the Magistrate has committed illegality and has not exercised the jurisdiction vested in him, in accordance with law.

16. Accordingly, the present criminal revision is **allowed**. The impugned order dated 20.10.2022 passed by the Civil Judge (Senior Division), FTC, Basti in Criminal Misc. Application No.462/2012/2022 (Vishwanath vs. Shivnath) is set aside.

17. The Magistrate concerned shall pass a fresh order on the application of the revisionist filed under Section 156 (3) Cr.P.C. after giving opportunity of hearing to the revisionist/applicant.

18. However, it is hereby made clear that while making aforesaid observations, this Court is merely concerned with the illegality of impugned order and no observation or finding has been made on merit of the case.

19. The Magistrate shall dispose of the application under Section 156 (3) Cr.P.C. without being influenced by any observation made in this order except that relating to non-applicability of Section 195 (1) (b) Cr.P.C. to the facts of the case.

Order Date :- 20.03.2024

Amit