

(1996) 08 AHC CK 0127

Allahabad High Court

Case No: Criminal Miscellaneous Writ Petition No. 2649 of 1996

Paras Nath Singh and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Aug. 16, 1996

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 154, 156, 156(1), 195(1)
- Penal Code, 1860 (IPC) - Section 419, 420, 463, 467, 468

Hon'ble Judges: G.P. Mathur, J; D.C. Srivastava, J

Bench: Division Bench

Advocate: D.S.P. Singh and S.P. Singh, for the Appellant; G.A., for the Respondent

Final Decision: Dismissed

Judgement

G.P. Mathur, J.

This petition under Article 226 of the Constitution has been filed for quashing the F.I.R. dated 14.6.1996 lodged by Respondent No. 6 on the basis of which a case has been registered as Crime No. 156/96 u/s 419/420/467/468, Indian Penal Code at P. S. Ahrauli district Azamgarh against the Petitioner.

2. The allegations in the F.I.R. in brief, is that the complainant's grandfather--Aparbal Tiwari had executed a registered will in favour of the complainant's wife Smt. Kamla Devi in 1983 and he died in June, 1989. The Petitioner Paras Nath Singh manufactured a forged unregistered will purporting to have been executed by Aparbal Tiwari in August, 1992 in his favour and succeeded in obtaining mutation of his name over the property of Aparbal Tiwari aforesaid in October, 1992. It is alleged that the will was forged and fictitious as Aparbal Tiwari had died in 1989 and as such there was no question of his executing any will in favour of Paras Nath Singh in August, 1992.

3. The only submission made by learned Counsel for the Petitioners is that the will of August, 1992 was filed by Paras Nath Singh in Mutation proceedings before Tehsildar (Revenue Court) and in view of Section 195(1)(b)(ii). Code of Criminal Procedure, cognizance of such an offence could be taken only on the complaint in writing of the Mutation Court and in this view of the matter, the police has no right to investigate the case and consequently, the F.I.R. and investigation are liable to be quashed.

4. It may be noticed that on the basis of the F.I.R. lodged by the complainant, a case u/s 419/420/467/468, Indian Penal Code has been registered at the police station. These offences are cognizable offences and, therefore, the case was rightly registered in view of Section 154, Code of Criminal Procedure. The Officer-in-Charge of a police station has a right to investigate a cognizable offence without the order of a Magistrate in view of Section 156(1), Code of Criminal Procedure. It has been held by Privy Council in AIR 1945 18 (Privy Council) , that the power u/s 156, Code of Criminal Procedure is not limited by any condition. In [State of West Bengal Vs. S.N. Basak](#) , it has been held that the police has a statutory right to investigate a cognizable offence without the sanction of any Court. The bar created by Section 195(1)(b)(ii) is against taking of cognizance by a Court with respect to any offence described in Section 463 or punishable under Sections 471 and 475 or Section 476 of the Penal 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. The stage of taking cognizance is entirely different from investigation of the case and the said stage will arrive after charge-sheet has been submitted. It is not the case of the Petitioners that after investigation, the police has submitted charge-sheet against them and the learned Magistrate has taken cognizance of the offence. Therefore, the provisions of Section 195(1)(b)(ii), Code of Criminal Procedure cannot act as bar against registration of a criminal case or investigation by the police. This very question has been considered in considerable detail by a learned Single Judge in G.B. Gupta v. State of U.P. 1986 AWC 254 and it has been held as follows:

First information report relating to a cognizance offence has to be investigated by a police officer as provided u/s 156 of the Code. In Section 156 or any other provision for that matter contained in the Code, we do not find a bar expressly made against investigation being taken up and carried on by a police officer, even though the offence is such that the cognizable may not be taken by a Magistrate except upon a complaint as provided in Section 195(1)(b). Code of Criminal Procedure.

5. We are in respectful agreement with the aforesaid view.

6. No other point was urged.

7. The writ petition lacks merit and is dismissed at the admission stage.