
Jhagaru and Others Vs State of U.P. and Another

Criminal M. A. No. 22434 of 2007

Court: Allahabad High Court

Date of Decision: Sept. 26, 2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 156(3), 195, 340, 482#Penal Code, 1860 (IPC) â€” Section 416, 420, 465, 466, 468

Citation: (2008) 1 ACR 843

Hon'ble Judges: Vinod Prasad, J

Bench: Single Bench

Advocate: K.N. Mishra and V.K. Mishra, for the Appellant; A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

Vinod Prasad, J.

Heard learned Counsel for the applicants and the learned A.G.A.

2. The applicants are the charge-sheeted accused of Crime No. C-13/06, under Sections 416, 420, 465, 466, 468 and 471, I.P.C., P. S.

Colonelganj, District Allahabad. On the basis of the charge-sheet now Case No. 1918 of 2007 has been registered before A.C.J.M., room No. 2

Allahabad against the applicants. Aggrieved by the aforesaid criminal prosecution, the applicants, who are five in number have approached this

Court invoking the inherent jurisdiction u/s 482, Cr. P.C. with the prayer to quash the prosecution of the aforesaid case.

3. Learned Counsel for the applicants made following submissions. Firstly, he contended that there is a bar u/s 195, Cr. P.C. in respect of a

document alleged to have been forged. He submitted that only the Court before whom the said document has been filed is competent to lodge a

complaint and nobody else can undertake such an exercise, therefore, prosecution of the applicants is bad in law being unsanctified by Section 195,

Cr. P.C. He further contended that the competent civil court before whom the forged document was tendered after an inquiry u/s 340, Cr. P.C.

came to the conclusion that no document has been forged and therefore, the aggrieved person cannot file an application u/s 156(3), Cr. P.C. in

respect of those documents alleging therein that those very documents are forged which were filed before the Court of law. Thirdly, learned

Counsel for the applicants contended that the civil suit has been decided as dismissed as withdrawn as Plaintiff has stated that he never filed it and

the suit plaint is forged, therefore, criminal prosecution is also malicious.

4. Learned A.G.A., contended that all the contentions of learned Counsel for the applicants are misconceived, bereft of any sound reasoning and

therefore, this application with the prayer of quashing the charge-sheet is merit-less and be dismissed.

5. After hearing both the sides, I take the contentions raised by learned Counsel for the applicants in a seriatim.

6. Learned Counsel for the applicants firstly attacked the prosecution and continuation thereof by hankering that the bar u/s 195, Cr. P.C. is

attracted and applies with all rigors.

7. The said contention of learned Counsel for the applicants is bereft of any sound reasoning as well as law laid down by the Apex Court. I may

recall that there has been a difference of opinion between this Court and Punjab and Haryana High Court on the applicability of Section 195, Cr.

P.C. This Court was of the opinion that if a forged document is tendered before the Court of law then it is only the Court before whom the said

forged document is tendered is entitled to lodge a complaint. Punjab and Haryana High Court on the contrary was of the opinion that Section 195,

Cr. P.C., will be attracted only when the document tendered before the Court was forged subsequently to such tendering and while the document

was in custody of the Court that it was forged.

8. The Apex Court after going into the controversy now has resolved it and has laid down the law that unless the document which is in the custody

of the Court is forged, the bar u/s 195, Cr. P.C. will not be attracted. The said law of Apex Court has been laid down by Full Bench of the Apex

Court in Iqbal Singh Marwah v. Meenakshi Marwah 2005 SCC 1 : 2005 (2) ACR 1379 .

9. In such a view, the contention of learned Counsel for the applicants that the bar u/s 195 Cr. P.C., is attracted in the present case does not hold

in water and is hereby repelled. All the more so because it is not the case of the applicant that the document was forged when it was in the custody

of the Court. The allegation is that the document was firstly forged and then tendered in a Court of law.

10. Coming to the second ground of attack by the learned Counsel for the applicant it is to be noted that an inquiry u/s 340, Cr. P.C. is only a

preliminary inquiry. It is not an inquiry into an offence by the police. Moreover, there is no document on record to show that Section 340, Cr.

P.C., application was rejected by the concerned Court. If a Court does not make a complaint u/s 340, Cr. P.C., it does not divest the victim to

move an application u/s 156(3), Cr. P.C.

11. There is yet another reason for not accepting the contention of learned Counsel for the applicants and that is that if the law permits any person

to take recourse in different forums under different sections of the statutes then this Court cannot curtail such a vested statutory right in a person. In

this view I am also fortified by the various pronouncements of the Apex Court wherein the Apex Court has held that civil and criminal proceedings

in respect of the forged documents can go on simultaneously and criminal prosecution cannot be thwarted merely on pendency of civil litigation. In

such a view, the second contention of the learned Counsel for the applicant is also without any merit and hereby repelled.

12. Coming to the third and the concluding submissions of the learned Counsel for the applicant, I only say this much that once a charge-sheet is

laid in the Court it is for the applicant to claim discharge as this Court cannot critically appreciate disputed question of facts which cannot be

adjudicated upon in exercise of power u/s 482, Cr. P.C., where the prosecution allegations are taken to be correct without any addition or

subtraction. It is the law that this Court in its inherent power should fetch out a defence for the accused persons. The legitimate prosecution which

discloses, after investigation, triable offences sufficient to launch a prosecution cannot be nipped into bud by resorting to an exercise not

permissible under law of scanning the allegations and the defence. Intrinsic worth of the evidences of the prosecution witnesses and allegation is to

be critically appreciated by the trial court and said exercise is purviewed within the authority of the trial court.

13. Since the applicants are the charge-sheeted accused, they have got statutory alternative remedy of claiming of discharge before the appropriate

court at the stage of framing of charge. At this stage, it cannot be said that no offence is made out.

14. Further the present application filed by the applicant is bereft of the material on the basis of which charge-sheet has been laid by the

Investigating Officer against the applicants. The present application, therefore, is based on concealment of the evidences recorded during the

investigation and on such basis I cannot quash the legitimate prosecution.

15. This application is without any merit. It is hereby dismissed with a direction that the bail prayer of the applicant shall be considered as

expeditiously as possible, if possible on the same day in the aforementioned crime number.