

(1995) 04 AHC CK 0098

Allahabad High Court

Case No: Criminal Revision No. 1512 of 1982

Ram Sunder and Others

APPELLANT

Vs

Smt. Chanri and Another

RESPONDENT

Date of Decision: April 5, 1995

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 195, 195(1)
- Penal Code, 1860 (IPC) - Section 34, 463, 467, 471, 475

Citation: (1995) 19 ACR 213

Hon'ble Judges: C.A. Rahim, J

Bench: Single Bench

Advocate: Satya Prakash Srivastava, for the Appellant; Brijesh Sahai, G.A., for the Respondent

Judgement

C.A. Rahim, J.

This Revision arises out of the judgment and order dated 22.7.1982 passed by the Munsif-Magistrate, IV, in case No. 2 of 1982 rejecting the application of the accused-applicants for discharging the accused as requirements of Section 195, Code of Criminal Procedure were not fulfilled.

2. The fact under challenge is that the accused applicants have got the sale-deed in dispute executed in favour of accused Ram Sunder through an imposter lady for which a complaint u/s 467/34, I.P.C. was filed. It is alleged that the accused-applicants have filed the said document in the mutation proceeding pending before the Tahsildar, Shahganj. It was challenged before the trial Court that any complaint in connection with the genuineness of the document should only be filed by that Court itself and not by a private complainant. On behalf of the complainant it was stated that Section 195, Code of Criminal Procedure has no application in the present case and the petition of complaint is not barred. The learned Magistrate by an order dated 22.7.1982 rejected the plea of the

accused-applicants and held that Section 195 applies only if the offence complained of was committed by "a party to the proceedings" and it must have been committed during judicial proceeding pending in a Court and if the offence complained of was committed before commencement of the proceeding, Section 195, Code of Criminal Procedure would not operate as a bar.

3. The learned Counsel has referred the case of *Ram Pal Singh v. State of U.P. and Ors.* reported in (19) 1982 ACC 34, wherein it has been held that:

....A plain reading of the Section shows that what it actually bars is taking at the instance of a private complainant cognizance of an offence of the nature described in Section 463, I.P.C. or punishable under Sections 471, 475 and 476, I.P.C, where such offence is said to have been committed in respect of a document produced or given in evidence in any proceeding in Court. The Section nowhere provides that its provisions should be attracted only if such offence has been committed after initiation of the judicial proceedings in which the objectionable document had been produced or filed.

4. Referring this decision the learned Counsel has submitted that after amendment the word "by a party to the proceeding" has been omitted. So the present position is that if the alleged offence was committed by any other person than the party to the proceeding, even then complaint of the Court would be necessary. There has been no change in the position that if a document is alleged to have been forged outside the Court and produced in Court proceeding or given in evidence the complaint is required to be filed by the Court itself and not by a private person. He has submitted that the learned Magistrate could not appreciate the said point and passed the order on the basis of a provision which has been repealed by the new Code.

5. In the decision of [Harbans Singh and Others Vs. State of Punjab](#), the case of [Ram Pal Singh Vs. State of U.P. and Others](#), was discussed. The said Full Bench of the Punjab and Haryana High Court, after considering the amendment and also the law as stood till then, has held that:

Section 195(1)(b)(ii) of the new Code is limited in operation only to the offences mentioned in this Section if committed in regard to a document produced or given in evidence in such proceeding, while document is in custody of the Court. It has no application to a case in which such a document, is fabricated prior to its production or given in evidence.

6. This being the latest position of the interpretation of Section 195(1)(b)(ii) of the Code I have no hesitation to hold that when a document is forged outside the Court and produced or given in evidence in a judicial proceeding no complaint of Court is necessary to initiate a criminal case against the accused persons. In the instant case when a document, alleged to be forged, was produced before the Tahsildar in a mutation proceeding and the same was not forged while in custody of the Tahsildar or during continuance of the proceeding Section 195(1)(b)(ii) does not operate as a

bar. So I find that a private person is entitled to lodge the prosecution in that circumstances. The finding of the learned Magistrate that it is confined to a party to the proceeding is not a correct view since the new amendment has come in force. Still then the other part of his decision holds good and accordingly the case should proceed. Since there is no merit in this Revision, the same is dismissed. The interim order passed in connection with this Revision is hereby vacated.