

PETITIONER:
SUSHIL KUMAR AND ORS.

Vs.

RESPONDENT:
STATE OF HARYANA AND ORS.

DATE OF JUDGMENT 08/12/1987

BENCH:
SHARMA, L.M. (J)
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SHARMA, L.M. (J)
SEN, A.P. (J)

CITATION:
1988 AIR 419 1988 SCR (2) 182
1987 SCC Supl. 654 JT 1987 (4) 586
1987 SCALE (2) 1248

ACT:

Power of Magistrate frame charges under Sections 471 and 474, Cr. P. C. in the absence of a complaint from a Civil Court-Bar of section 195(1)(b)(ii), Cr. P. C. thereon.

HEADNOTE:

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The appellant Sushil Kumar filed a Civil Suit against the wife of respondent No. 2 and obtained, on the strength of a copy of a deed of partnership, a temporary injunction restraining the wife and her husband from interfering with the possession of some property. Thereupon the respondent No. 2 lodged a report with the police against the appellants, alleging that the partnership deed was a forged one and, accordingly, the appellants had committed offences punishable under ss. 465, 468, 471, 474, 120B and 420, I.P.C. The magistrate framed charges against the appellants under ss. 465, 468, 120B and 420, I.P.C., but refrained from framing charges under ss. 471 & 474, I.P.C., on the ground that, in the absence of a complaint from the Civil Court, he could not take cognizance under those sections.

On a revision preferred by the State, the Additional Sessions Judge upheld the order of the magistrate. The respondent No. 2 then moved the High Court under s. 482 of the Code of Criminal Procedure 1973, which reversed the decision, holding that as the document was not forged during the period it was in Court Custody, the bar of s. 19(1)(b)(ii) Cr.P.C. was not attracted, and directed the magistrate to frame fresh charges. The appellants thereupon appealed to this Court by special leave against the order of the High Court.

Dismissing the appeal and confirming the direction of the High Court but on a different ground, the Court,

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HELD: The original document, the deed of partnership, was not filed in the Civil Court and a temporary injunction was obtained on the strength of its copy. The reasoning given by the High Court in support of its judgment is not correct but that does not help the appellants. The Privy Council in *Sanmukhsingh v. The King*, [1949] L.R. 77 I.A. 7, observed that by production of a copy of the

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allegedly forged document, it cannot be said that the document itself was given in evidence. This view accords with the plain grammatical meaning of the words and is also supported by the practical common sense. [184D, F-G]

Since the document alleged to have been forged in the case was not produced in the Court, the provisions of section 195(1)(b)(ii) of the Code of Criminal Procedure have no application. The High Court's direction is confirmed but on a different ground, as indicated.[184G-H]

Sanmukhsingh v. The King, [1949] L.R. 77 I.A. 7 and Budhu Ram v. State of Rajasthan, [1963] 3 S.C.R. 376, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 617 of 1987.

From the Judgment and order dated 20 3 1987 of the Punjab and Haryana High Court in CrI. Misc No. 5338-M of 1986

Prem Malhotra for the Appellants
S.C. Mohanta, C.V.S. Rao, A.K Goel, and B.P Singh for the Respondents

The Judgment of the Court was delivered by SHARMA, J. This appeal is directed against the judgment of the High Court of Punjab and Haryana reversing the order of the Judicial Magistrate, Hissar refusing to frame charges against the appellants under ss 471 and 474 of the Indian Penal Code. The dispute between the parties arose out of a difference between them in connection with a partnership business. The appellant Sushil Kumar filed a civil suit against Smt. Shakuntala Devi, wife of Inder Prakash, respondent No. 2. Relying upon a copy of a deed of partnership, he obtained a temporary injunction restraining her and her husband from interfering with the possession of a certain property. The respondent No 2, thereupon, lodged a report with the police against the appellants alleging that the partnership deed was a forged one and that they being parties to the forgery had committed offences punishable under ss. 465, 468, 471, 474, 120B and 420 IPC. A challan was submitted and the learned Magistrate framed charges against the appellants under ss. 465, 468, 120B and 420 IPC, but refrained from

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framing any charge under ss. 471 and 474 IPC holding that he could not take cognizance under these sections in the absence of a complaint from the civil court.

2. The State preferred a revision and the Additional Sessions Judge, Hissar, who heard the application upheld the order of the Magistrate. The respondent No. 2, therefore, moved the High Court under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) and a learned Single Judge reversed the decision holding that as the document was not forged during the period it was in court custody the bar of Section 195(1)(b)(ii) of the Code was not attracted. The Magistrate was accordingly directed to frame fresh charges. The appellants, after obtaining special leave, are challenging this order in the present appeal.

3. According to the allegations in the first information report the partnership deed in question was forged by the appellant Sushil Kumar and Shiv Nandan in league with the officials of the Income tax Department and

Sushil Kumar, thereafter, produced a copy of the forged deed in the suit. The original document was not filed in the civil court, and temporary injunction was obtained on the strength of its copy. We shall assume that the reasoning given by the High Court in support of its judgment is not correct but that does not help the appellants. Sub-section (1)(b)(ii) of Section 195 of the Code lays down that no court shall take cognizance of any offence described in the sections mentioned therein 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. Interpreting the similar language of the corresponding provision in the earlier Criminal Procedure Code of 1898, the Privy Council in *Sanmukhsingh v. The King*, [1949] L.R. 77 I.A. 7, observed that by production of a copy of the allegedly forged document it cannot be said that the document itself was given in evidence. This view, as pointed out, accords with the plain grammatical meaning of the words and is also supported by the practical common sense. The Judgment of the Judicial Committee was followed in *Budhu Ram v. State of Rajasthan*, [1963] 3 SCR 376. Accordingly, we hold that since the document alleged to have been forged was not in the present case produced in the court, the provisions of the section 195(1)(b)(ii) of the Code have no application. We, therefore, confirm the High Court's direction, but on a different ground as indicated. The appeal is dismissed.

S.L.

Appeal dismissed.

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