

THE HIGH COURT OF SIKKIM : GANGTOK

CRIMINAL REVISION NO.15 OF 2003

In the matter of a revision petition under sections 397/401/482 of the Code of Criminal Procedure, 1973.

Lakpa Sherpa,
S/o Late Jeeba Sherpa,
R/o Chuba Busty, Middle Camp,
P.O. Middle Camp,
P.S. Ranipool,
East Sikkim
.... **Petitioner**

VERSUS

State of Sikkim
.... **Respondent**

For the petitioner : M/s J. C. Ghosh, D. K. Singh
and Amitabh Shankar,
Advocates.

For the respondent: Shri J. B. Pradhan, Additional
Public Prosecutor.

PRESENT: THE HON'BLE SHRI JUSTICE R. K. PATRA, CHIEF JUSTICE.

Date of judgment: 2nd April, 2004.

J U D G M E N T

R. K. PATRA, C.J.

The petitioner stands convicted under sections 177 and 423 IPC and sentenced respectively to pay a fine of Rs.1,000/- and Rs.1,500/- on each count with a default clause of imprisonment.

2. The petitioner was placed on trial in the court of the Chief Judicial Magistrate (E & N) at Gangtok in criminal case no. 104 of 1999 to face charges under sections 177, 423 and 471 IPC. The learned Magistrate by judgment and

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order dated 15.5.2002 found him guilty of all the charges. She accordingly convicted him thereunder. For the offence under sections 177 and 423 IPC he was sentenced to pay a fine of Rs.1,000/- and Rs.1,500/- respectively with a default clause of sentence. For the offence under section 471 IPC a fine of Rs.2,000/- with a default clause of sentence was imposed. Being aggrieved by the above conviction and sentence, the petitioner preferred Criminal Appeal no. 5 of 2002 in the Court of Sessions Judge (Special Division – II). The learned Sessions Judge by the judgment dated 31.3.2003 confirmed the conviction and sentence under sections 177 and 423 IPC but acquitted the petitioner of the charge under section 471 IPC.

3. The facts and circumstances leading to the trial of the petitioner are as follows:

One Deepak Lama and others filed a complaint on 25.7.1998 before the officer-in-charge, Ranipool police station alleging that the petitioner obtained certificate of identification and purchased landed property in Sikkim on the basis of forged Sikkim subject certificate. On the basis of the said complaint the police drew up a formal FIR and registered it as Ranipool police station case no. 22(7)98 dated 31.7.1998 and took up investigation. In course of the investigation it came to light that the petitioner had obtained certificate of identification and purchased landed property in

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Sikkim on the basis of forged Sikkim subject certificate. As per the Home Department notification dated 22.11.1995 the District Collectors and officers mentioned therein are competent to issue certificate of identification to such person who has or had agricultural land in rural areas and has been ordinarily residing in the state of Sikkim. On verification of the dossier relating to registration of land the investigating officer found that the petitioner purchased land (plot nos. 723/755 and 727/754) at 32nd middle camp claiming himself to be a holder of the Sikkim subject certificate vide serial no.321 volume no. XXIII under Singtam block. On further probe into the Sikkim subject register kept under the custody of District Collector, East Sikkim it was noticed that name of one Anjali Rai stood recorded at serial no. 321 volume no. XXIII under Singtam block. The investigating officer in the circumstances was *prima facie* of the view that the petitioner dishonestly/fraudulently and knowingly furnished false information to the public servant by showing his name as having been recorded in the Sikkim subject register (vide serial no. 321 volume XXIII under Singtam block) and got plot nos. 723/755 and 727/754 transferred and registered in his name and also fraudulently used false khatian parcha for plot no. 723/755 as genuine and obtained certificate of identification for himself and his family members. He accordingly filed charge sheet against

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the petitioner under sections 177, 423 and 471 IPC in the court of the Chief Judicial Magistrate (E & N) at Gangtok. The learned Magistrate on 20.7.1999 took cognizance of the offences and issued notice to the petitioner.

The prosecution examined 18 witnesses to bring home the charges against the petitioner. On perusal of the evidence the learned trial Judge held that the petitioner used the false Sikkim subject certificate and on its basis purchased land and thereby committed the offences under sections 177 and 423 IPC. She also held him guilty of the offence under section 471 IPC.

The learned Sessions Judge in the appeal while acquitting the petitioner of the charge under section 471 IPC held as follows:

“In my opinion the evidence so far discussed is more than enough to hold that the attested copies of Sikkim Subject Certificates used by the accused for obtaining the registration of the two plots of land were false documents and by filing such false documents he has furnished false information to the public servant being the Registrar, East District and also the accused had dishonestly or fraudulently executed sale deeds and getting them registered in his name on the basis of false statement relating to the consideration i.e., the attested copies of Sikkim subject certificate Exbts. P.14 and P.20 and has thus committed the offence defined u/s 177/423 IPC.”

4. Shri Ghosh, learned counsel for the petitioner did not challenge the finding of facts recorded by both the courts. By raising pure question of law, he contended that

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the conviction under sections 177 and 423 IPC is not sustainable in law.

5. The conviction under section 177 IPC is assailed by Shri Ghosh on the ground that for taking cognizance of an offence punishable under the said section complaint in writing "by the public servant concerned" is necessary as required under section 195 Cr.P.C. and no complaint having been filed by "the public servant concerned", the learned Magistrate could not have taken cognizance of the offence and consequently the ultimate conviction is without jurisdiction. In support of this contention, reliance was placed on the judgments of the Supreme Court in Daulat Ram vs. State of Punjab AIR 1962 SC 1206 and State of U.P. vs. Mata Bhikh (1994) 4 SCC 95.

In order to appreciate the aforesaid, it is necessary to take note of the charge framed against the petitioner under section 177 IPC which reads as follows:-

"That you, on or about the year 1996 being legally bound to furnish information on any subject, to the District Collector, a public servant as such, furnished as true the information to procure Certificate of Identification on a subject which you knew or reason to believe to be false and the information which you were legally bound to give respects commission of an offence and thereby committed an offence punishable u/s 177 of the IPC, and within my cognizance."

The learned Sessions Judge after discussing the evidence on record has observed as follows:-

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“Thereafter, they made inquiry as to how the said area had been recorded in the name of the accused and in course of their inquiry they found that the accused had used Sikkim Subject Certificate of P.W.3 Anjali Rai by erasing her name and putting his own name and submitting the same to the concerned authority. On the basis of the landed property registered in his name, accused obtained the Certificate of Identification from the District Collector.”

Section 195(1) Cr.P.C. lays down that no court shall take cognizance of any offence punishable under sections 172 to 188 IPC except on the complaint in writing of the public servant concerned or some other public servant to whom he is administratively subordinate. On reading of the charge and the above finding recorded by the learned Sessions Judge it is clear that the appropriate public servant to file complaint was the District Collector. Admittedly in the present case no complaint was filed by the District Collector concerned in the court alleging that offence was committed by the petitioner under section 177 IPC. The provision of section 195(1) Cr.P.C. is mandatory and therefore in absence of a complaint by the District Collector concerned, the learned Magistrate could not have taken cognizance of the offence. The order dated 20.7.1999 taking cognizance of the offence under section 177 IPC is therefore without jurisdiction. It is also not curable by section 465 Cr.P.C. as it goes to the root of the matter. Consequently the trial is void *ab initio* and the conviction of the petitioner under section 177 IPC is not sustainable in law.

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In Daulat Ram (supra) the accused was alleged to have committed an offence under section 182 IPC and the public servant concerned to file complaint was the Tehsildar but he did not file any complaint. Instead charge sheet was filed by the Station House Officer. The Supreme Court accordingly held as follows:-

“..... It was therefore incumbent, if the prosecution was to be launched, that the complaint in writing should be made by the Tehsildar as the public servant concerned in this case. On the other hand what we find is that a complaint by the Tehsildar was not filed at all, but a charge sheet was put in by the Station House Officer. The learned counsel for the State Government tries to support the action by submitting that S.195 had been complied with inasmuch as when the allegations had been disproved, the letter of the Superintendent of Police was forwarded to the Tehsildar and he asked for “a calender.” (sic) This paper was filed along with the charge sheet and it is stated that this satisfies the requirements of S.195. In our opinion, this is not a due compliance with the provisions of that section. What the section contemplates is that the complaint must be in writing by the public servant concerned and there is no such compliance in the present case. The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant namely the Tehsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained.”

[emphasis supplied]

6. It was next submitted by Shri Ghosh that cognizance in respect of the offence punishable under section 423 IPC was taken beyond the prescribed period of limitation and therefore the conviction is not maintainable in the eye of law, it being without jurisdiction. In support of

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this submission the learned counsel relied on the judgments of the Supreme Court in State of Punjab vs. Sarwan Singh AIR 1981 SC 1054 and Srinivas Pal vs. Union Territory of Arunachal Pradesh AIR 1988 SC 1729. In Sarwan Singh (supra) the Supreme Court observed that the object of putting a bar of limitation on prosecutions is clearly to prevent the parties from filing cases after long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution. It is, therefore, of the utmost importance that any prosecution, whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation.

In Srinivas Pal (supra) cognizance of offences under sections 279, 304A and 338 IPC was taken after lapse of about 9½ years. The period of limitation for taking cognizance of the above offences is 3 years. As cognizance was taken beyond the prescribed period of limitation the Supreme Court held that the trial was vitiated.

7. Sub-section 1 of section 468 Cr.P.C. states that except as otherwise provided elsewhere in the Code, no court

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shall take cognizance of an offence of the category specified in sub-section 2 after the expiry of the period of limitation. Imprisonment for 2 years or fine or both is the punishment prescribed for an offence under section 423 IPC. The period of limitation is three years for taking cognizance of an offence under section 423 IPC (vide section 468(2)(c) Cr.P.C.).

The relevant charge framed against the petitioner reads as follows:

“That you, on or about the year 1989 dishonestly signed a deed purported to transfer any property to you which contains a false statement relating to the consideration for the said transfer for whose use which is really intended to operate and thereby committed an offence punishable u/s 423 of IPC, and within my cognizance.”

From the above, it may be seen that the petitioner was alleged to have committed the offence of section 423 IPC in or about the year 1989. The learned Magistrate by order dated 20.7.1999 took cognizance of the said offence which is clearly beyond the prescribed period of limitation of 3 years. Section 468(1) Cr.P.C. contains an embargo against taking cognizance of the offences of the categories specified therein after the prescribed period of limitation. The provision is mandatory. For the reasons aforesaid, I am of the opinion that cognizance having been taken beyond the period of limitation, the consequent trial leading to the conviction is without jurisdiction and *non est* in the eye of law. The

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conviction of the petitioner under section 423 IPC is therefore not sustainable in law.

8. In view of the aforesaid, the conviction and sentence imposed on the petitioner under sections 177 and 423 IPC are hereby set aside and he is acquitted of the charges.

9. In the result, the revision is allowed.

10. Before parting with the case, it is necessary to pass an order with regard to the disputed documents seized from the petitioner. Ordinarily when the case ends in acquittal, documents or articles seized from the accused are directed to be returned to him provided he claims them as his own. In the present case, the petitioner's conduct in obtaining the Sikkim subject certificate and certificates of identification appears to be not above-board. Those documents which were exhibited in court may therefore be returned to the office of the District Collector (East) for taking such legal action permissible in law, if so advised, against the offender.


(R. K. Patra)
Chief Justice
02.04.2004

Dictation taken
&
typed by me
Dipak Saha