M/S Bandekar Brothers Pvt.Ltd. vs Prasad Vassudev Keni on 2 September, 2020

Equivalent citations: AIR 2020 SUPREME COURT 4247, AIRONLINE 2020 SC 713

Author: R.F. Nariman

Bench: Rohinton Fali Nariman, Navin Sinha, Indira Banerjee

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 546-550 OF 2017

M/S BANDEKAR BROTHERS PVT. LTD. & ANR. …Appella

Versus

PRASAD VASSUDEV KENI, ETC. ETC. …Responde

JUDGMENT

R.F. Nariman, J.

1. The proceedings in this case arise out of two criminal complaints dated 11.08.2009 filed by the Appellants against the Respondents herein before the Court of the Sessions Judge, North Goa, under Section 340 read with Section 195 of the Code of Criminal Procedure, 1973 ("CrPC") in respect of offences alleged under Sections 191 and 192 of the Indian Penal Code, 1860 ("IPC").

2. Accused No.1 in the aforesaid complaints is a proprietary concern of the late V.G. Quenim, based in Goa, which is engaged in the business of producing, processing and sale of iron ore. Accused Nos.2 and 3 are his son and wife respectively, who are the co-proprietors of M/s V.G. Quenim, the aforesaid V.G. Quenim having expired on 20.07.2007. M/s V.G. Quenim had shared a business relationship with the Appellants since the year 1990. However, disputes arose between the parties, as a result of which four suits, being Suit Nos.7, 8, 14 and 21 of 2000/A, were filed by the Appellants against M/s V.G. Quenim before the Civil Court at Bacholim. A fifth suit, being Suit No.1/2003/A, was filed by the late V.G. Quenim against the Appellants, which was withdrawn on 01.10.2007 unconditionally. The Respondents filed their Written Statements and Counter Claims in the said suits filed by the Appellants.

3. After withdrawal of the fifth suit, these criminal complaints were filed, inasmuch as the Appellants contended that in these proceedings, the Respondent/Accused had given false evidence, and had forged debit notes and made false entries in books of accounts. By two orders dated 01.10.2009, the learned Additional Sessions Judge-I in North Goa at Panaji, returned the complaints, stating that these complaints could only be filed in the Court before whom such proceedings were pending in which the alleged offences were committed. The complaints were then filed before the learned Judicial Magistrate First Class at Bicholim.

4. After various depositions had been made by witnesses before the said Magistrate, an application dated 09.05.2011 was filed, in which the Appellants prayed, relying upon the Supreme Court judgment in Iqbal Singh Marwah and Anr. v. Meenakshi Marwah and Anr. (2005) 4 SCC 370, that the said complaints be converted to private complaints. This was done by two orders of the Judicial Magistrate dated 13.10.2011, who after converting the said complaints into private complaints, issued process under Sections 191, 192 and 193 of the IPC. It is important to note that the Appellants/complainants did not file any revision or other proceedings to challenge the issue of process under the aforesaid sections of the IPC.

5. The Respondents, however, filed revision applications against the said orders, in which it was stated that the bar contained in Section 195(1)(b)(i) of the CrPC, and the procedure under Section 340 CrPC being mandatory, could not be circumvented, and the complaints read as a whole would clearly show that offences under Sections 191 to 193 of the IPC alone were made out, as a result of which the drill under the aforesaid sections of the CrPC would have to be observed. In a counter-affidavit dated 08.10.2012 filed to the aforesaid revision applications, the Appellants, for the first time, took the plea that offences under Sections 463, 464, 465, 467, 468, 469, 471, 474, 475 and 477-A of the IPC were also made out against the Respondents, as a result of which a private complaint would be maintainable. The learned Additional Sessions Judge, Mapusa, by his judgment dated 05.03.2013, held that the bar under Section 195(1)(b)(i) of the CrPC was attracted, and that the provisions under Section 340 of the CrPC, which were mandatory, had to be followed. Since this was not done, the revision petitions were allowed and the complaints quashed. Iqbal Singh Marwah (supra) was distinguished, stating that it was a judgment which concerned itself with Section 195(1)(b)(ii) and not Section 195(1)(b)(i) of the CrPC, and would, therefore, have no application in the facts of this case.

6. Writ petitions filed by the Appellants against the aforesaid judgment proved unsuccessful, the High Court dismissing the aforesaid writ petitions by the impugned judgment dated 22.11.2013.

7. Shri Anil Kumar Mishra, learned Advocate appearing on behalf of the Appellants, took us through the complaints dated 11.08.2009. It was his case that debit notes had been created by the Respondents which were totally fraudulent, in order to buttress their case that certain amounts were owed by the Appellants to the Respondents. The learned counsel argued with great vehemence that this is why the fifth suit, viz., Suit No.1/2003/A was ultimately withdrawn on 01.10.2007, the Respondents having realised that the evidence given would completely belie their false case. The learned counsel then referred to the counter-affidavit filed to the revision petition before the learned Sessions Judge in order to buttress his plea that offences under the “forgery” sections of the IPC had

been made out, which would all be the subject matter of a private complaint, and which do not have to follow the procedure set out by Section 340 CrPC. He relied very heavily upon Iqbal Singh Marwah (supra) to argue that the documents and books of accounts etc. that were forged, were all forged before they were taken in evidence in the Court proceedings, as a result of which the judgment squarely applied, and a private complaint, therefore, would be maintainable. He also argued that the High Court was wrong in stating that the Appellants did not file any Section 482 petition making a grievance that the complaints disclosed other offences also, and that the Magistrate ought to have issued process for the same. He cited a judgment to assail this part of the High Court judgment, stating that the High Court ought not to have stood upon ceremony, but if it had found injustice, ought to have suo moto exercised powers under Section 482 of the CrPC. He further attacked the impugned judgment, by stating that its reliance on Surjit Singh v. Balbir Singh (1996) 3 SCC 533, a judgment that has been expressly overruled in Iqbal Singh Marwah (supra), would also show that the reasoning of the aforesaid judgment is completely faulty. He cited a number of judgments which followed Iqbal Singh Marwah (supra), and stated that it was wrong to say that it was confined only to Section 195(1)(b)(ii), but that its reasoning would clearly apply to cases which fall within both Section 195(1)(b)(i) as well as Section 195(1)(b)(ii) of the CrPC. As an alternative argument, he went on to add that process may have been issued stating wrong sections, which would make no difference, as at the stage of framing a charge under Section 211 of the CrPC, the correct sections could then be referred to. Even thereafter, charges as framed can always be altered under Section 216 of the CrPC. He then went on to point out that under Section 460(e) of the CrPC, once a Magistrate issues process under Section 190(1)(a) of the CrPC, any irregularity that may be committed in the course of the proceedings can always be condoned. According to him, therefore, the complaints were correctly registered as private complaints and ought to continue as such.

8. Shri Yogesh Nadkarni, learned counsel appearing on behalf of the Respondents, referred to the pending suits, and to the application for conversion of the complaints, which, according to him, were correctly filed under Section 195 read with Section 340 CrPC. He argued that the High Court was correct in its conclusion that Iqbal Singh Marwah (supra) was a case which arose only under Section 195(1)(b)(ii) of the CrPC, and that the complaints filed in the present case disclose offences which would fall within Section 195(1)(b)(i) of the CrPC. He also vehemently argued that the debit notes, which were the sheet-anchor of the Appellants' case, cannot be said to have been forged within the meaning of Sections 463 and 464 of the IPC, as the debit notes, even if dishonestly or fraudulently made, had to be made within the intention of causing it to be believed that such debit notes were made by a person whom the person making it knows that it was not made, which is not the case, as the debit notes were made on the sole proprietorship's letterhead, with the writing and signatures that were of the proprietor. He, therefore, argued that the forgery sections under the IPC do not get attracted at all to the complaints, which were correctly filed under Section 195 read with Section 340 of the CrPC. He contended that the counter-affidavit that was relied upon by the Appellants to the Respondent's revision applications was clearly an afterthought, in order to buttress a hopeless case. In any event, the complaints read as a whole, would make it clear that the entirety of the complaints were in, or in relation to, offences committed under Sections 191 and 192 of the IPC used/to be used in judicial proceedings and, therefore, fell squarely within Section 195(1)(b)(i) of the CrPC. He also argued that after conversion into a private complaint, the

Magistrate issued process only under Sections 191 to 193 of the IPC, which order remained unchallenged by the Appellants. He also cited judgments relating to the object sought to be achieved by Section 195, as well as judgments which distinguished Iqbal Singh Marwah (supra) on that ground that it applied only to cases falling under Section 195(1)(b)(ii) and not to cases falling under Section 195(1)(b)(i) of the CrPC.

9. Having heard the learned counsel appearing on behalf of the parties, it is necessary to set out the relevant sections of the CrPC and the IPC. CrPC "190. Cognizance of offences by Magistrates.—(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try." "195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—(1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said 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, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate. (2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

> Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.
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> (3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.
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> (4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the Principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:
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> Provided that—
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> (a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;
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> (b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed." "340. Procedure in cases mentioned in section 195.—(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of Justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,—
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> (a) record a finding to that effect;
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> (b) make a complaint thereof in writing;
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> (c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-

bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section

195. (3) A complaint made under this section shall be signed,—

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, "Court" has the same meaning as in section

195.

341. Appeal.—(1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint, or, as the case may be, making of the complaint which such former Court might have made under section 340, and, if it makes such complaint, the provisions of that section shall apply accordingly. (2) An order under this section, and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision." "343. Procedure of Magistrate taking cognizance.—(1) A Magistrate to whom a complaint is made under section 340 or section 341 shall, notwithstanding anything contained in Chapter XV, proceed, as far as may be, to deal with the case as if it were instituted on a police report.

(2) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided." IPC "24. "Dishonestly".—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

25. “Fraudulently”.—A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.” “191. Giving false evidence.—Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise. Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

192. Fabricating false evidence.—Whoever causes any circumstance to exist or makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding is said “to fabricate false evidence”.

193. Punishment for false evidence.—Whoever intentionally gives false evidence in any of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. Explanation 1.—A trial before a Court-martial is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.” “196. Using evidence known to be false.—Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.” “463. Forgery.—Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

464. Making a false document.—A person is said to make a false document or false electronic record— First.—Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature, with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly.—Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration. Explanation 1.—A man's signature of his own name may amount to forgery Explanation 2.—The making of a false document in the name of a fictious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery. Explanation 3.—For the purposes of this section, the expression "affixing electronic signature" shall have the meaning assigned to it in clause (d) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000)."

10. Section 190 of the CrPC states that a Magistrate may take cognizance of any offence in one of three situations: (a) upon receiving a complaint of facts which constitute such offence; (b) upon a police report of such facts; and (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. However, Section 195 of the CrPC states that in the offences covered by it, no Court shall take cognizance except upon the complaint in writing of a public servant, insofar as the offences mentioned in sub-clause (1)(a) are concerned, and by the complaint in writing of the "Court" as defined by sub-section (3), insofar as the offences delineated in sub-clause (1)(b) are concerned. The reason for the enactment of Section 195 of the CrPC has been stated felicitously in Patel Laljibhai Somabhai v. State of Gujarat (1971) 2 SCC 376, as follows:

> "7. The underlying purpose of enacting Section 195(1)(b) and (c) and Section 476, seems to be to control the temptation on the part of the private parties considering themselves aggrieved by the offences mentioned in those sections to start criminal prosecutions on frivolous, vexatious or insufficient grounds inspired by a revengeful desire to harass or spite their opponents. These offences have been selected for the court's control because of their direct impact on the judicial process. It is the judicial process, in other words the administration of public justice, which is the direct and immediate object or victim of those offence and it is only by misleading the courts and thereby perverting the due course of law and justice that the ultimate object of

> harming the private party is designed to be realised. As the purity of the proceedings of the court is directly sullied by the crime, the Court is considered to be the only party entitled to consider the desirability of complaining against the guilty party. The private party designed ultimately to be injured through the offence against the administration of public justice is undoubtedly entitled to move the court for persuading it to file the complaint. But such party is deprived of the general right recognized by Section 190 CrPC, of the aggrieved parties directly initiating the criminal proceedings. The offences about which the court alone, to the exclusion of the aggrieved private parties, is clothed with the right to complain may, therefore, be appropriately considered to be only those offences committed by a party to a proceeding in that court, the commission of which has a reasonably close nexus with the proceedings in that court so that it can, without embarking upon a completely independent and fresh inquiry, satisfactorily consider by reference principally to its records the expediency of prosecuting the delinquent party."

11. This section has been construed to be mandatory, being an absolute bar to the taking of cognizance under Section 190 of the CrPC, unless the conditions of the section are met, as held by this Court in Daulat Ram v. State of Punjab (1962) Supp. 2 SCR 812 as follows (at page 815):

> "The words of the section, namely, that the complaint has to be in writing by the public servant concerned and that no court shall take cognizance except on such a complaint clearly show that in every instance the court must be moved by the appropriate public servant. We have to decide therefore whether the Tahsildar can be said to be the public servant concerned and if he had not filed the complaint in writing, whether the police officers in filing the charge-sheet had satisfied the requirements of Section 195. The words "no court shall take cognizance" have been interpreted on more than one occasion and they show that there is an absolute bar against the court taking seisin of the case except in the manner provided by the section."

12. Under Section 340 of the CrPC, the procedure in cases mentioned in Section 195 of the CrPC is set out. The Court may make a preliminary enquiry if it thinks necessary, and then record a finding to the effect that the provisions of Section 195(1)(b) of the CrPC are attracted, as a result of which the Court itself is then to make a complaint in writing, and send it to a Magistrate of the first class having jurisdiction. Where the Court declines to make any such complaint, an appeal is provided under Section 341 of the CrPC. The appellate power of the Court under Section 341 can also be invoked, insofar as a complaint has been made under Section 340, by the person so aggrieved. By Section 341(2), the appellate order shall be final and shall not be subject to revision. Finally, a Magistrate to whom a complaint is made under these sections shall proceed to deal with the case as if it were instituted on a police report – vide Section 343(1).

13. The point forcefully argued by the learned counsel on behalf of the Appellants is that his clients, being victims of forgery, ought not to be rendered remediless in respect of the acts of forgery which are committed before they are used as evidence in a court proceeding, and that therefore, a private

complaint would be maintainable in the fact circumstance mentioned in the two criminal complaints referred to hereinabove. The Court has thus to steer between two opposite poles of a spectrum – the "yin" being the protection of a person from frivolous criminal complaints, and the "yang" being the right of a victim to ventilate his grievance and have the Court try the offence of forgery by means of a private complaint. In order to appreciate whether this case falls within the category of avoiding frivolous litigation, or whether it falls within the individual's right to pursue a private complaint, we must needs refer to several decisions of this Court.

14. In Babu Lal v. State of Uttar Pradesh (1964) 4 SCR 957, a 5-Judge Bench of this Court dealt with the difference between the ingredients of offences made out under Sections 192 and 193 of the IPC on the one hand, and the "forgery" sections of the IPC on the other. The Court put it thus (at pages 962-963):

> "It is true that some of the ingredients of the act of fabricating false evidence which is penalised under Section 193 Indian Penal Code and of making a false document and thereby committing forgery within the meaning of Sections 463 and 464 of the Indian Penal Code are common. A person by making a false entry in any book or record or by making any document containing a false statement may, if the prescribed conditions of Section 463 are fulfilled, commit an offence of forgery. But the important ingredient which constitutes fabrication of false evidence within the meaning of Section 192 Indian Penal Code beside causing a circumstance to exist or making a false document — to use a compendious expression — is the intention that the circumstance so caused to exist or the false document made may appear in evidence in a judicial proceeding, or before a public servant or before an arbitrator, and lead to the forming of an erroneous opinion touching any point material to the result of the proceeding. The offences of forgery and of fabricating false evidence for the purpose of using it in a judicial proceeding are therefore distinct, and within the description of fabricating false evidence for the purpose specified in Section 479-A Criminal Procedure Code, the offence of forgery is not included. In any event the offence penalised under Section 471 Indian Penal Code can never be covered by sub-section (1) of Section 479-A. Therefore for taking proceeding against a person who is found to have used a false document dishonestly or fraudulently in any judicial proceeding, resort may only be made to Section 476 Code of Criminal Procedure."

15. In Dr. S. Dutt v. State of Uttar Pradesh (1966) 1 SCR 493, the question arose in the context of an expert witness (i.e. the Appellant before the Supreme Court) who produced a diploma before the Sessions Court from the Imperial College of Science and Technology in London, to the effect that he had specialised in the subject of criminology. The prosecution applied to the Sessions Judge under Section 195 of the CrPC for prosecution of Dr. Dutt under Section 193 of the IPC. This application was rejected. Two days after its rejection, the private complainant lodged a report at a police station alleging that Dr. Dutt had committed an offence under Section 465, 466 and 471 of the IPC, stating that the diploma produced was forged, and that Dr. Dutt had used this "in the court with a bad motive", passing it off as genuine. The question which arose before this Court was as to whether the

private complaint was substantially for offences under Sections 191 to 193 or 196 of the IPC, as against the "forgery" sections contained in the IPC from Section 463 onwards. After setting out the two sets of sections contained in the IPC, the Court held:

> "The broad distinction between offences under the two groups is this. Section 465 deals with the offence of forgery by the making of a false document and Section 471 with the offences of using forged documents dishonestly or fraudulently. Section 193 deals with the giving or fabricating of false evidence and Section 196 with corruptly using evidence known to be false. The gist of the offence in the first group is the making of a false document and the gist of the offences in the second group is the procuring of false circumstances or the making of a document containing a false statement so that a judicial officer may form a wrong opinion in a judicial proceeding on the faith of the false evidence. Another important difference is that whereas Section 471 requires a user to be either fraudulent, dishonest or both, Section 196 is satisfied if the user is corrupt. The Penal Code defines the expressions fraudulently and dishonestly but not the expression corrupt.
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> We shall now attempt to apply the two groups of offences contained in Chapter XI and Chapter XVIII, to the proved acts of Dr Dutt. We shall begin with Chapter XI. The definition of the expression "fabricating false evidence" in Section 192, already quoted, quite clearly covers this case. If Dr Dutt fabricated the false diploma he made a document containing a false statement intending that it may appear in evidence and so appearing in evidence may cause any person who is to form an opinion upon it to entertain an erroneous opinion touching on point material to the result of a judicial proceedings. Dr Dutt, as alleged, was falsely posing as an expert and was deposing about matters which were material to the result of the trial. He had a document to support his claim should occasion arise. He produced the document, although asked to do so, intending that the presiding Judge may form an erroneous opinion about Dr Dutt and the relevancy of his evidence. The case was thus covered by Section 192. When Dr Dutt deposed, let us assume falsely about his training, he committed an offence under Section 193. Again, when Dr Dutt used the diploma as genuine his conduct was corrupt, whether or not it was dishonest or fraudulent." (at pages 499-500) "It would thus be seen that the action of Dr Dutt was covered by Sections 192 and 196 of the Penal Code. If Dr Dutt gave false evidence in court or if he fabricated false evidence the offence under Section 193 was clearly committed. If he used fabricated evidence an offence under Section 196 was committed by him. These offences would have required a complaint in writing of the Sessions Judge before cognizance could be taken." (at page 501) "We are, therefore, satisfied that Dr Dutt's conduct does not come within Section 471. On the other hand, it falls within Section 196 which casts its net wider in the interest of the purity of administration of justice. It may be noted that an offence under Section 196 of the Penal Code is a far more serious offence than the offence under Sections 465/471. The former is punishable with imprisonment upto seven years and fine while the latter is punishable with imprisonment upto two years or with fine.

> In this connection we may again recall the words of this Court which were put in the forefront by Mr Chari that it is not permissible for the prosecution to drop a serious charge and select one which does not require the procedure under Section 195 of the Code of Criminal Procedure. If the offence was under Section 196 of the Indian Penal Code, a complaint in writing by the court concerned was required. Before a complaint is made the court has to consider whether it is expedient in the interests of justice to order a prosecution. In the lesser offence no such complaint by the court is necessary and it is obvious that the lesser offence was chosen to bypass the Sessions Judge who had earlier decided that Dr Dutt should not be prosecuted for perjury. Such a device is not to be commended. In our opinion, the offence in the present case did not fall within Sections 465/471 IPC and the prosecution launched against Dr Dutt cannot be allowed to go on." (at pages 503-504)

16. In Baban Singh and Anr. v. Jagdish Singh and Anr. (1966) 3 SCR 552, the question was whether the swearing of false affidavits before a Court would amount to an offence under Sections 191 or 192 of the IPC, or whether Section 199 of the IPC would be attracted, in which case the special procedure delineated by Section 479-A of the Code of Criminal Procedure, 1898 need not be followed. The Court held (at pages 555-

556):

> "The matter has to be considered from three standpoints. Does the swearing of the false affidavits amount to an offence under s.199, Indian Penal Code or under either s.191 or 192, Indian Penal Code? If it comes under the two latter sections, the present prosecution cannot be sustained, Section 199 deals with a declaration and does not state that the declaration must be on oath. The only condition necessary is that the declaration must be capable of being used as evidence and which any court of justice or any public servant or other person, is bound or authorised by law to receive as evidence. Section 191 deals with evidence on oath and s.192 with fabricating false evidence. If we consider this matter from the standpoint of s.191, Indian Penal Code the offence is constituted by swearing falsely when one is bound by oath to state the truth because an affidavit is a declaration made under oath. The definition of the offence of giving false evidence thus applies to the affidavits. The offence may also fall within s.
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> 192. It lays down inter alia that a person is said to fabricate false evidence if he makes a document containing a false statement intending that such false statement may appear in evidence in a judicial proceeding and so appearing in evidence may cause any person who, in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding. When Baban Singh and Dharichhan Kuer made declarations in their affidavits which were tendered in the High Court to be taken into consideration, they intended the statements to appear in evidence in a judicial proceeding, and so appearing, to cause the court to entertain an erroneous opinion regarding the

> compromise. In this way their offence came within the words of ss.191/192 rather than s.199 of the Indian Penal Code. They were thus prima facie guilty of an offence of giving false evidence or of fabricating false evidence for the purpose of being used in a judicial proceeding.

Section 479-A lays down a special procedure which applies to persons who appear as witnesses before civil, revenue or criminal courts and do one of two things: (i) intentionally give false evidence in any stage of the judicial proceeding or (ii) intentionally fabricate false evidence for the purpose of being used in any stage of the judicial proceeding. The first refers to an offence under Section 191/193 and the second to that under 192/193 of the Indian Penal Code. In respect of such offences when committed by a witness, action under s.479-A alone can be taken. The appellants were witnesses in the inquiry in the High Court and they had fabricated false evidence. If any prosecution was to be started against them the High Court ought to have followed the procedure under s. 479-A of the Code of Criminal Procedure. Not having done so, the action under S.476 of the Code of Criminal Procedure was not open because of sub-s. (6) of s.479-A and the order under appeal cannot be allowed to stand."

17. In Kamla Prasad Singh v. Hari Nath Singh (1967) 3 SCR 828, the question which arose before the Court was as to whether the intentional making of a false entry in a document to be used in a judicial proceeding would make out an offence under Section 192, or whether it would make out an offence under Section 218 of the IPC, in which case a private complaint would have been maintainable before a Magistrate. In dealing with the distinctive features of complaints filed under Sections 192 and 193 of the IPC, the Court held (at pages 829-830):

> "The first question is what are the distinct features of Section 193 and Section 218 of the Indian Penal Code. Section 193 states the punishment for giving false evidence in any stage of a judicial proceeding or fabricating false evidence for the purpose of being used in any stage of judicial proceeding. Section 191 defines the offence of giving false evidence and Section 192 the offence of fabricating false evidence. We may ignore Section 191 because here admittedly there is no giving of false evidence as defined in the Penal Code. The offence of fabricating false evidence comes into existence when a person causes any circumstance to exist or makes any false entry in any book or record or makes any document containing a false statement intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding etc. and so appearing cause an erroneous opinion be formed touching a point material to the result of such proceeding. The offence is a general one and does not specify the person or the kind of document. It may be any person and the fabricated evidence may be in any form. Section 218 on the other hand deals with the intentional preparation of a false record by a public servant with the object of saving or injuring any person or property. The difference between the two sections is clearly noticeable. Section 192 deals with judicial proceeding and the false evidence is intended to be used in a judicial proceeding. Section 218 deals with public servants and there the gist is the intentional preparation of a false record with a view of saving or injuring any person or property. This need not have relation to a judicial

proceeding as such."

18. In holding that the alleged offence committed by one Ahlmad would fall under Section 192 and not under Section 218 of the IPC, the Court then went on to observe (at pages 830-831):

> "It will appear from this that the alleged offence committed by the Ahlmad was clearly in or in relation to a proceeding in Court. In fact he made an incorrect entry about a case actually in Court with the intention that the date of the institution of the proceeding may be taken to be November 9, 1962 although the case was alleged to be instituted after December 4, 1962. His offence (if any be proved against him) would fall within Section 192. Section 192 deals with fabrication of false evidence to be used in a judicial proceeding so as to cause an erroneous opinion to be formed on a material point. Section 192 therefore completely covers the case against Ahlmad, and must cover the case of Hari Nath Singh the alleged abettor. Section 218 Indian Penal Code does not apply in this case, because the record was not made with the object of saving or injuring any person or property. The offence of Section 192 of the Indian Penal Code is punishable under Section 193 Indian Penal Code and the latter section is one of the sections mentioned in Section 195(1)(b) of the Code of Criminal Procedure, the gist of which has been reproduced above. The decision of the High Court was therefore right that the Court could not take cognizance of the offence alleged against the Ahlmad and his abettor, because the offence was fabricating of false evidence in a case which was in fact pending and the false entry was made with the object that an erroneous opinion be formed on a material point. Such a case could only be instituted by a court in which or in relation to which this offence was committed and a private complaint was therefore incompetent."

19. At this stage, it is important to understand the difference between the offences mentioned in Section 195(1)(b)(i) and Section 195(1)(b)(ii) of the CrPC. Where the facts mentioned in a complaint attracts the provisions of Section 191 to 193 of the IPC, Section 195(1)(b)(i) of the CrPC applies. What is important is that once these sections of the IPC are attracted, the offence should be alleged to have been committed in, or in relation to, any proceeding in any Court. Thus, what is clear is that the offence punishable under these sections does not have to be committed only in any proceeding in any Court but can also be an offence alleged to have been committed in relation to any proceeding in any Court.

20. The words "in relation to" have been the subject matter of judicial discussion in many judgments. Suffice it to say that for the present, two such judgments need to be noticed. In State Wakf Board, Madras v. Abdul Azeez Sahib and Ors., AIR 1968 Mad. 79, the expression "relating to" contained in Section 57(1) of the Wakf Act, 1954 fell for consideration before the Madras High Court. The High Court held:

> "8. We have no doubt whatever that the learned Judge, (Kailasam, J.), was correct in his view that even the second suit has to be interpreted as within the scope of the words employed in S. 57(1) namely, "In every suit or proceeding relating to title to

> Wakf property". There is ample judicial authority for the view that such words as "relating to" or "in relation to" are words of comprehensiveness which might both have a direct significance as well as an indirect significance, depending on the context. They are not words of restrictive content and ought not to be so construed. The matter has come up for judicial determination in more than one instance. The case in Compagnie Financiec Dae Pacifique v. Peruvian Guano Co, is of great interest, on this particular aspect and the judgment of Brett, L.J., expounds the interpretation of O. 31, R. 12 of the Rules of the Supreme Court, 1875, in the context of the phrase "material to any matter in question in the action". Brett, L.J., observed that this could both be direct as well as indirect in consequences and according to the learned Judge the test was this (at page 63):
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> "...a document can properly be said to contain information which may enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary if it is a document which may fairly lead him to a train of inquiry, which may have either of these consequences.""

21. Likewise, in Mansukhlal Dhanraj Jain and Ors. Etc. v. Eknath Vithal Ogale Etc., (1995) 2 SCC 665, the expression "Suits and proceedings between a licensor and licensee...relating to the recovery of possession" under Section 41(1) of the Presidency Small Cause Courts Act, 1882 came up for consideration before this Court. The Court held:

> "14...The words 'relating to' are of wide import and can take in their sweep any suit in which the grievance is made that the defendant is threatening to illegally recover possession from the plaintiff-licensee. Suits for protecting such possession of immovable property against the alleged illegal attempts on the part of the defendant to forcibly recover such possession from the plaintiff, can clearly get covered by the wide sweep of the words "relating to recovery of possession" as employed by Section 41(1).
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> xxx xxx xxx
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> 16. It is, therefore, obvious that the phrase "relating to recovery of possession" as found in Section 41(1) of the Small Cause Courts Act is comprehensive in nature and takes in its sweep all types of suits and proceedings which are concerned with the recovery of possession of suit property from the licensee and, therefore, suits for permanent injunction restraining the defendant from effecting forcible recovery of such possession from the licensee-plaintiff would squarely be covered by the wide sweep of the said phrase.

Consequently in the light of the averments in the plaints under consideration and the prayers sought for therein, on the clear language of Section 41(1), the conclusion is inevitable that these suits could lie within the exclusive jurisdiction of Small Cause Court, Bombay and the City Civil Court would have no jurisdiction to entertain such suits."

22. Contrasted with Section 195(1)(b)(i), Section 195(1)(b)(ii) of the CrPC speaks of offences described in Section 463, and punishable under Sections 471, 475 or 476 of the IPC, when such offences are alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court. What is conspicuous by its absence in Section 195(1)(b)(ii) are the words "or in relation to", making it clear that if the provisions of Section 195(1)(b)(ii) are attracted, then the offence alleged to have been committed must be committed in respect of a document that is custodia legis, and not an offence that may have occurred prior to the document being introduced in court proceedings. Indeed, it is this distinction that is vital in understanding the sheet anchor of the Appellant's case namely, this Court's judgment in Iqbal Singh Marwah (supra).

23. In Iqbal Singh Marwah (supra), a 5-Judge Bench was constituted in view of a conflict between decisions of this Court as follows:

> "2. In view of conflict of opinion between two decisions of this Court, each rendered by a Bench of three learned Judges in Surjit Singh v. Balbir Singh [(1996) 3 SCC 533] and Sachida Nand Singh v. State of Bihar [(1998) 2 SCC 493] regarding interpretation of Section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973 (for short "CrPC"), this appeal has been placed before the present Bench."

24. The Court first spoke of the broad scheme of Section 195 of the CrPC, which deals with three distinct categories of offences, and held that the category of offences contained in Section 195(1)(b)(ii) ought to be read along with the offences contained in Section 195(1)(a) and 195(1)(b)(i), which are clearly offences which directly affect either the functioning or discharge of duties of a public servant or of courts of justice. This was stated in paragraph 10 of the judgment as follows:

> "10. The scheme of the statutory provision may now be examined. Broadly, Section 195 CrPC deals with three distinct categories of offences which have been described in clauses (a),
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> (b)(i) and (b)(ii) and they relate to (1) contempt of lawful authority of public servants, (2) offences against public justice, and (3) offences relating to documents given in evidence. Clause (a) deals with offences punishable under Sections 172 to 188 IPC which occur in Chapter X IPC and the heading of the Chapter is — "Of Contempts of the Lawful Authority of Public Servants".

These are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b)(i) refers to offences in Chapter XI IPC which is headed as — "Of False Evidence and Offences Against Public Justice". The offences mentioned in this clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a court of justice or before a public servant who is bound or authorised by law to receive such declaration, and also to some other offences which have a direct correlation with the proceedings in a court of justice (Sections 205 and 211 IPC). This being the scheme of two provisions or clauses of Section 195 viz. that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a

court of justice, the expression "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" occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 CrPC. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any court."

25. The Chapter heading of Chapter XXVI of the CrPC, which contains Sections 340 and 341 was then referred to – the heading reading "Provisions as to Offences Affecting the Administration of Justice", which according to the Court also indicated that the offences mentioned in Section 195(1)(b)(ii) are offences which directly affect the administration of justice. After referring to various judgments, the Court then explained the difference between Section 195(1)(c) of the Code of Criminal Procedure, 1898 and Section 195(1)(b)(ii) of the CrPC, 1973 as follows:

> "19. As mentioned earlier, the words "by a party to any proceeding in any court" occurring in Section 195(1)(c) of the old Code have been omitted in Section 195(1)(b)(ii) CrPC. Why these words were deleted in the corresponding provision of the Code of Criminal Procedure, 1973 will be apparent from the 41st Report of the Law Commission which said as under in para 15.39:
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> "15.39. The purpose of the section is to bar private prosecutions where the course of justice is sought to be perverted leaving to the court itself to uphold its dignity and prestige. On principle there is no reason why the safeguard in clause (c) should not apply to offences committed by witnesses also. Witnesses need as much protection against vexatious prosecutions as parties and the court should have as much control over the acts of witnesses that enter as a component of a judicial proceeding, as over the acts of parties. If, therefore, the provisions of clause (c) are extended to witnesses, the extension would be in conformity with the broad principle which forms the basis of Section 195."
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> 20. Since the object of deletion of the words "by a party to any proceeding in any court" occurring in Section 195(1)(c) of the old Code is to afford protection to witnesses also, the interpretation placed on the said provision in the earlier decisions would still hold good."

26. Importantly, the Court then stated that Section 195 of the CrPC is an exception to the general provision contained in Section 190 thereof, and creates an embargo upon the power of the Court to take cognizance of certain types of offences enumerated under Section 195, which must be necessarily follow the drill contained in Section 340 of the CrPC (see paragraph 21). An important reason is then given by the Court, which is that the victim of a forged document which is forged outside the court premises and before being introduced in a Court proceeding, would render the

victim of such forgery remediless, in that it would otherwise be left only to the court mentioned in Section 340 of the CrPC who decides as to whether a complaint ought or ought not to be lodged in respect of such complaint. Paragraph 23 therefore states:

> "23. In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded."

27. Paragraph 25 of the judgment then refers to how the broader interpretation that was accepted in Surjit Singh (supra) would be capable of great misuse. This was put by the Court as follows:

> "25. An enlarged interpretation to Section 195(1)(b)(ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in court, is capable of great misuse. As pointed out in Sachida Nand Singh [(1998) 2 SCC 493] after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of the society at large."

28. The Court then held that where it is possible, interpretatively speaking, an impracticable result should be avoided (see paragraphs 26 and 27). The Court, which was dealing with a forged will that

had been introduced in Court proceedings after it was forged, therefore concluded:

> "33. In view of the discussion made above, we are of the opinion that Sachida Nand Singh [(1998) 2 SCC 493] has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis.
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> 34. In the present case, the Will has been produced in the court subsequently. It is nobody's case that any offence as enumerated in Section 195(1)(b)(ii) was committed in respect to the said Will after it had been produced or filed in the Court of District Judge.

Therefore, the bar created by Section 195(1)(b)(ii) CrPC would not come into play and there is no embargo on the power of the court to take cognizance of the offence on the basis of the complaint filed by the respondents. The view taken by the learned Additional Sessions Judge and the High Court is perfectly correct and calls for no interference."

29. Thus, Iqbal Singh Marwah (supra) is clear authority for the proposition that in cases which fall under Section 195(1)(b)(ii) of the CrPC, the document that is said to have been forged should be custodia legis after which the forgery takes place. That this judgment has been followed in several subsequent judgments is beyond cavil – see Mahesh Chand Sharma v. State of U.P and Ors. (2009) 15 SCC 519 (at paragraphs 21-

23); C.P. Subhash v. Inspector of Police, Chennai and Ors. (2013) 11 SCC 559 (at paragraphs 12 and 13); Kishorbhai Gandubhai Pethani v. State of Gujarat and Anr. (2014) 13 SCC 539 (at paragraphs 14 and 15) and Vishnu Chandru Gaonkar v. N.M. Dessai (2018) 5 SCC 422 (at paragraphs 14 and 17).

30. However, Shri Mishra, undaunted by the fact that Iqbal Singh Marwah (supra) and its progeny are all cases relatable to Section 195(1)(b)(ii) of the CrPC, has argued that the same reasoning ought to apply to cases falling under Section 195(1)(b)(i) of the CrPC. First and foremost, as has been pointed out hereinabove, every judgment that follows Iqbal Singh Marwah (supra) is in the context of offences mentioned in Section 195(1)(b)(ii) of the CrPC. Secondly, there is direct authority for the proposition that the ratio in Iqbal Singh Marwah (supra) cannot be extended to cases governed by Section 195(1)(b)(i) of the CrPC.

31. Thus, in Kailash Mangal v. Ramesh Chand (2015) 15 SCC 729, this Court was confronted with the conviction of the appellant under Sections 193 and 419 of the IPC in a case initiated on a private complaint. Iqbal Singh Marwah (supra) was put in the forefront of the argument, stating that the offence that had been committed on the facts of this case had been committed with respect to a document prior to its being custodia legis. This Court distinguished Iqbal Singh Marwah (supra) as follows:

"9. While restoring the conviction of the appellant under Section 193 IPC, the High Court has relied upon a decision of the Constitution Bench of this Court in Iqbal Singh Marwah v. Meenakshi Marwah. A Constitution Bench of this Court in Iqbal Singh Marwah case held that the protection engrafted under Section 195(1)(b)(ii) CrPC would be attracted only when the offence enumerated in the said provisions has been committed with respect to a document after it had been produced or given in evidence in proceedings in any court i.e. during the time when the document was in custodia legis. Where the forgery was committed before the document was filed in the Court, the High Court was held not justified in quashing the prosecution of the accused under Sections 467, 468, 471, 472 and 477-A IPC on the ground that the complaint was barred by the provisions of Section 195(1)(b)(ii) CrPC. Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis.

10. In the instant case, the false affidavit alleged to have been filed by the appellant was in a proceeding pending before the civil court and the offence falls under Section 193 IPC and the proceeding ought to have been initiated on the complaint in writing by that court under Section 195(1)(b)(i) IPC. Since the offence is said to have been committed in relation to or in a proceeding in a civil court, the case of Iqbal Singh Marwah is not applicable to the instant case."

32. Likewise, in a recent judgment in Narendra Kumar Srivastava v. State of Bihar and Ors. (2019) 3 SCC 318, the Court was concerned with false affidavits that had been prepared/forged outside the Court. This being so, the question that arose before the Court was whether the Magistrate was justified in taking cognizance of an offence punishable under Section 193 of the IPC on the basis of a private complaint. This Court held:

"13. It is clear from sub-section (1)(b) of Section 195 CrPC that the section deals with two separate set of offences:

(i) of any offence punishable under Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 IPC, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court; [Section 195(1)(b)(i)]

(ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476 IPC, 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.

[Section 195(1)(b)(ii)].

14. On the reading of these sections, it can be easily seen that the offences under Section 195(1)(b)(i) and Section 195(1)(b)(ii) are clearly distinct. The first category of offences refers to offences of false evidence and offences against public justice, whereas, the second category of offences relates to offences in respect of a document produced or given in evidence in a proceeding in any court.

15. Section 195 CrPC lays down a rule to be followed by the court which is to take cognizance of an offence specified therein but contains no direction for the guidance of the court which desires to initiate prosecution in respect of an offence alleged to have been committed in or in relation to a proceeding in the latter court. For that purpose, one must turn to Section 340 which requires the court desiring to put the law in motion to prefer a complaint either suo motu or an application made to it in that behalf.

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17. Section 340 CrPC makes it clear that a prosecution under this section can be initiated only by the sanction of the court under whose proceedings an offence referred to in Section 195(1)(b) has allegedly been committed. The object of this section is to ascertain whether any offence affecting administration of justice has been committed in relation to any document produced or given in evidence in court during the time when the document or evidence was in custodia legis and whether it is also expedient in the interest of justice to take such action. The court shall not only consider prima facie case but also see whether it is in or against public interest to allow a criminal proceeding to be instituted.

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21. As already mentioned, clauses under Section 195(1)(b) CrPC i.e. sub-section 195(1)(b)(i) and sub-section 195(1)(b)(ii) cater to separate offences. Though Section 340 CrPC is a generic section for offences committed under Section 195(1)(b), the same has different and exclusive application to clauses (i) and (ii) of Section 195(1)(b) CrPC.

22. In Sachida Nand Singh [(1998) 2 SCC 493] relied on by the learned counsel for the appellant, this Court was considering the question as to whether the bar contained in Section 195(1)(b)(ii) CrPC is applicable to a case where forgery of the document was committed before the document was produced in a court. It was held: (SCC pp. 497 & 501, paras 6 & 23) “6. A reading of the clause reveals two main postulates for operation of the bar mentioned there. First is, there must be allegation that an offence (it should be either an offence described in Section 463 or any other offence punishable under Sections 471, 475 and 476 IPC) has been committed. Second is that such offence should have been committed in respect of a document produced or given in evidence in a proceeding in any court. There is no dispute before us that if forgery has been committed while the document was in the custody of a court, then prosecution can be launched only with a complaint made by that court. There is also no dispute that if forgery was committed with a document which has not been produced in a court then the prosecution would lie at the instance of any person. If so, will its production in a court make all the difference?

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23. The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a court. Accordingly we dismiss this appeal."

23. In Sachida Nand Singh, this Court had dealt with Section 195(1)(b)(ii) CrPC unlike the present case which is covered by the preceding clause of the section. The category of offences which fall under Section 195(1)(b)(i) CrPC refer to the offence of giving false evidence and offences against public justice which is distinctly different from those offences under Section 195(1)(b)(ii) CrPC, where a dispute could arise whether the offence of forging a document was committed outside the court or when it was in the custody of the court. Hence, this decision has no application to the facts of the present case.

24. The case in hand squarely falls within the category of cases falling under Section 195(1)(b)(i) CrPC as the offence is punishable under Section 193 IPC. Therefore, the Magistrate has erred in taking cognizance of the offence on the basis of a private complaint. The High Court, in our view, has rightly set aside the order of the Magistrate. However, having regard to the facts and circumstances of the case, we deem it proper to set aside the costs imposed by the High Court."

33. The aforesaid judgments clearly lay down that when Section 195(1)(b)(i) of the CrPC is attracted, the ratio of Iqbal Singh Marwah (supra), which approved Sachida Nand Singh and Anr. v. State of Bihar and Anr. (1998) 2 SCC 493, is not attracted, and that therefore, if false evidence is created outside the Court premises attracting Sections 191/192 of the IPC, the aforesaid ratio would not apply so as to validate a private complaint filed for offences made out under these sections.

34. At this stage, it is important to examine the complaints dated 11.08.2019 filed in the present case. The first complaint, after setting out some facts, clearly states:

> "3. This Application is made under the provisions of Section 340 r/w section 195 of the Cr.P.C, 1973, (hereinafter called for short "the Said Code") seeking an order of inquiry into an offence committed by Accused under the provisions of Section 191 and 193 of the Indian Penal Code, 1860.(hereinafter called "Penal Code") An offence under these provisions have been committed by the Accused in relation to the proceedings before the Civil Judge Senior Division at Bicholim in Spl. Civil Suits No. 7/2000/A, 8/2000/A, 14/2000/A, 21/2000/A (first 4 suits) and 1/2003/A (the 5th suit, which stands withdrawn after completion of evidence). An offence under the above said provisions is also committed in respect of documents in the above suits for which a separate criminal complaint is being filed. Forged/manipulated documents have been produced and given in evidence in the above proceedings. All the above suits/proceedings are within the jurisdiction of this Hon'ble Court."

35. The complaint then refers to false statements made by the Respondents/accused in their Written Statements and Counter Claims in the first four suits, which are pleadings before the Court, and

then goes on to state:

> "14. The Complainants state that both the Accused No. 2 and Accused No. 3 have made declarations on a subject which they are bound by law and has, in fact, made Statements, which are false and which both the Accused know or believe to be false or does not believe it to be true, which is also applicable to the Accused No. 4 to 10 herein. The Accused 2 has given false evidence. Moreover, circumstances are caused by the Accused 2 to making false entries in any books or record intending that such circumstance, false entry or false statements does appear in evidence in a judicial proceedings before the Hon'ble Civil Judge Senior Division at Bicholim and, therefore, the false entry and false statements so appearing in evidence has caused persons in such proceedings to form a opinion upon the evidence or entertain an erroneous opinion touching any point material to the result of such proceedings."

36. Various particulars of fabricated documents are then given as follows:

> "f) In all the 5 Suits, the Accused produced some fabricated documents. Regarding one of such documents being a typed statement dated 3.09.1998 confronted to the Complainants Witness during his cross, a Xerox copy was first shown with handwritten remarks of page 2 thereof of an employee of the Accused. When the said witness declined to comment on the said Xerox copy on the next date, the original typed statement with the said handwritten remark torn/missing therein was shown to the witness. Whereas in the common Affidavit dated 10.02.2003 filed by late V.G. Quenim in the first 4 suits at para 38 stated:
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> "I say that in the torn portion of page one there were only initials of Shri Prabhu from my office. So also in the torn portion of page 2 the words written thereon were "checked with the previous statement and found correct" bearing initials of Mr. Vikas Naik who is working in my office as Accountant. I cannot explain how the said portion got torn"
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> In addition, there are other fabricated documents produced by the Accused in the said suits which would be the subject matter of complaint u/s 192 being filed by the Complainants herein separately.
>
> g) The Accounts were manipulated, false entries were made in their books of Account, Profit and Loss Account, Balance Sheet etc. The counterclaims filed in suit No.7/2000/A and 8/2000/A against complaint No.1 and 2 despite the above pointed out fabrication/manipulation were also written off as Bad Debts as on 31.03.2000 in their audited books of Account.

h)The Accused No.1 claimed that the Mutual, Open and Current Account was closed on 09.03.2000 whereas the Accused No.2 claimed that the SAME mutual open and current Account was closed on 09.03.2000 and 31.03.2000 i.e. on two occasions and finally during the cross examination of the

Accused No.2 herein in the 5th suit he has admitted that the same were not the ledger Accounts."

37. The prayer made in this complaint is then as follows:

> "IT IS THEREFORE PRAYED THAT THIS HON'BLE COURT BE PLEASED TO:
>
> (a) record a finding to that effect;
>
> (b) make a Complaint thereof in writing;
>
> (c) send it to a Magistrate of the First Class having Jurisdiction;
>
> (d) take sufficient Security for appearance of the Accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the Accused in custody to such Magistrate; and
>
> (e) bind over any person to appear and give evidence before such Magistrate."

38. So far as the second complaint is concerned, like the first complaint, this was also stated to be an application under Sections 340 read with 195 of the CrPC as follows:

> "3. This Application is made under the provisions of Section 340 read with section 195 of the Cr.PC, 1973, (hereinafter called for short the Said Code") seeking an order of inquiry into an offence committed by Accused under the provisions of Section 192 and 193 of the Indian Penal Code, 1860.(hereinafter called "Penal Code") An offence under these provisions have been committed by the Accused in relation to the proceedings in the Court of the Civil Judge Senior Division at Bicholim i.e. in Spl. Civil Suits No. 7/2000/A, 8/2000/A, 14/2000/A, 21/2000/A (first 4 Suits) and Spl.

Civil Suit No. 1/2003/A (the 5th Suit, which stands withdrawn after completion of evidence) An offence under the abovesaid provisions is committed in respect of documents in the above suits for which a separate criminal complaint is being filed. Forged/manipulated documents have been produced and given in Evidence in the above proceedings. All the above suits are within the jurisdiction of this Hon'ble Court.

a) Forged a Debit Note dated 09.03.2000 for Rs.1,88,27796/- alongwith the statements annexed thereto sent under the cover of letter dated 09.03.2000. Hereto marked as EXHIBIT-C Colly is copy of said documents.

b)The said Debit Note dated 09.03.2000 for Rs. 1,88,27,796/- at

(a) above is the subject matter of counterclaim filed by the Accused against the Complainant No. 1 in Spl. Civil Suit No. 7/2000/A which Debit Note is reflecting in the manipulated Ledger extract annexed to the written statement dated 10.03.2000 at Exh. A thereto which document is produced

and given in evidence in Spl. Civil Suit No.1/2003/A which document is at EXHIBIT-F COLLY herein.

c) Forged Debit Note dated 31.03.2000 for Rs.76,19,869/- alongwith the statements annexed thereto sent under the cover of letter dated 4.07.2000. Hereto annexed and marked as EXHIBIT - D Colly is the copy of the said documents.

d) Forged a Debit Note dated 31.03.2000 for the sum of Rs. 29,081/- also sent under the cover of the said letter dated 04.07.2000. Hereto marked as EXHIBIT-D Colly is the copy of the said document.

e) The said 2 Debit Notes at (c) and (d) above for total amounting to Rs. 76,48,950/- is subject matter of the counterclaim filed by the Accused against the Complainant No. 2 in Spl. Civil Suit No. 8/2000/A, which Debit Notes are reflecting in the manipulated ledger extract annexed to the written statement and counterclaim dated 04.07.2000 at Exh: B thereto, which document is produced and given in evidence in Spl. Civil Suit No. 1/2003/A which document is at EXHIBIT-J Colly herein.

In this Complaint, the Complainants request this Hon'ble Court to make a preliminary enquiry it deems fit and necessary. This Hon'ble Court will also be pleased to record (a) a record of evidence to this effect (b) to make a complaint thereof in writing

(c) and thereafter send it to a First Class Magistrate Court, having jurisdiction (d) pass such orders as this Hon'ble Court may deem fit and proper considering the facts and circumstances of the case for punishing the Accused under the Provisions of Section 193 and 196 of the said Penal Code."

39. Then the complaint goes on to refer to various false affidavits/statements made by the accused, as follows:

> "In such circumstances, he has declared on false affidavits/statements in all 5 suits being Spl. Civil Suits No. 7/2000/A, 8/2000/A, 14/2000/A, 21/2000/A and 1/2003/A respectively. He has also fabricated documents, false entries in his books of account, in order to file his counter claims in Spl. Civil Suits No. 7/2000/A and 8/2000/A. The false entries and the fabricated documents created by the Accused No. 2 are as follows:
>
> (i) Forged a Debit Note dated 09.03.2000 with statements annexed thereto and manipulated Ledger Account and claimed an amount of Rs. 1,88,27,796/- from the Complainant No. 1 in their counter claim which are at EXHIBIT-C Colly herein.
>
> (ii) Manipulated ledger extract of the Account of the Complainant No.1 appearing in the audited books of account of the Accused No.1 on the basis of the counterclaim for Rs.1,88,27,796/- filed by the Accused in Spl. Civil Suit No.7/2000/A annexed as Exh. 'A' to the Written Statement and counterclaim dated 10.03.2000 at EXHIBIT-F Colly

herein.

(iii) Forged a Debit Note dated 31 March, 2000 for an amount of Rs.76, 19,869/- with statements annexed thereto and manipulated Ledger Account and claimed an amount from the Complainant No. 2 in their counter claim sent under the cover of letter dated 04.07.2000 are at EXHIBIT-D Colly herein.

(iv) Forged a Debit Note dated 31 March, 2000 for the sum of Rs.29,081/- purportedly for Sales Tax and manipulated Ledger Account and claimed an amount from the Complainant No. 2 in their counter claim sent under the cover of letter dated 04.07.2000 is at EXHIBIT-D Colly herein.

(v) Manipulated Ledger extract of the Account of Complainant No.2 purportedly appearing in the audited books of account of the Accused No.1 on the basis of the counterclaim for a sum of Rs.76,48,950/- filed by the Accused in Spl. Civil Suit No.8/2000/A annexed at Exh. 'B' to the Written Statement and counterclaim dated 04.07.2000 at EXHIBIT-J Colly herein.

Apart from the above mentioned debit notes, many manipulations, false entries were made by the Accused in their books of Account, Profit and loss Account, Balance sheet etc. In the 5th Suit being Spl. Civil Suit No.1/2003/A, Accused No. 2 produced copy of the audited Profit and Loss Account and Balance Sheet as on 31/03/2000 with annexures, Tax Audit Reports issued by their Auditors and some supporting Ledger Accounts, Journal Vouchers et., in respect of all the transactions of Ore claimed by late V. G. Quenim the then Proprietor of the Accused No.1. The suit claim in the 5th suit being Spl. Civil Suit No. 1/2003/A as also the counter claims filed in Spl. Civil Suits No.7/2000/A and 8/2000/A against Complainant No. 1 and 2 were neither standing to the debit of to the Current Account of the respective Complainants herein nor the same were credited to the sale of ore account in the books of account of the Accused No.1 but instead, they have been written off as Bad Debts as on 31.03.2000 in their audited books of account."

40. Importantly, the averment made in paragraph 11 of the complaint reads as follows:

"11. The Complainants crave leave to refer to and rely upon the certified copies of the Cross-examination and the various books of account which has been manipulated, forged by making false entry by the Accused. The purpose of the Accused is to influence the Hon'ble Court to form an opinion upon such evidence."

41. As a result, the second complaint ends stating:

"15. The Complainants state that both the Accused No. 2 and Accused No. 3 have made a declarations on a subject which they are bound by law and has, in fact, made Statements, which are false and which both the Accused know or believe to be false or does not believe it to be true, which is also applicable to the Accused No.4 to 10 herein. The Accused No. 2 has given false evidence. Moreover, circumstances are caused by the Accused 2 and 3 to making false entries in any books or record intending that such circumstance, false entry or false statements does appear in

evidence in a judicial proceedings before the Hon'ble Civil Judge Senior Division at Bicholim and, therefore, the false entry and false statements so appearing in evidence has caused persons in such proceedings to form a opinion upon the evidence or entertain an erroneous opinion touching any point material to the result of such proceedings.

16. The Accused No.2 and 4 to 10 herein respectively joined as LR's upon the death of Mr. V.G. Quenim the then Proprietor of the Accused No.1 on 20.07.2007, in first 4 suits. Similarly, in the 5 suit the Accused Nos.2 to 10 herein respectively joined as LR's therein.

17. After the Accused No.2 to 10 abovenamed were brought on record in the said 5 suits in Aug./Sept. 2007, the said Accused have not even made any attempt to correct the false statements in the pleadings in all the respective suits which continues till date with the falsehood. Besides, the Accused No.2 and 3 are directly involved. Thus the Accused No.2 to 10 herein have become the co-proprietors of M/s. V.G. Quenim upon the death of late V.G. Quenim the original Proprietor of the Accused No.1 herein.

18. It is submitted that the Accused herein have therefore.

committed an offence w/s. 192 of the Indian Penal Code and the Accused herein are, punishable under the provisions of Section 193 of the Indian Penal Code.

IT IS THEREFORE PRAYED THAT THIS HON'BLE COURT BE PLEASED TO:

(a) record a finding to that effect;

(b) make a Complaint thereof in writing:

(c) send it to a Magistrate of the First Class having Jurisdiction;

(d) take sufficient Security for appearance of the Accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the Accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate."

42. A perusal of the aforesaid complaints leaves no manner of doubt that the first complaint attracts the provisions of Section 191 of the IPC, and the second complaint attracts the provisions of Section 192 of the IPC.

However, for the first time in the counter-affidavit to the revision application that was filed by the Respondents before the learned Sessions Judge, the Appellants stated:

> "II. The said application is liable/ought to be dismissed in as much as a perusal of the complaint and its accompaniments not only make out a case under section 192/193 IPC but the same also leads to a conclusion that the offences under sections 463, 464, 465, 467, 468, 469, 471, 474, 475 & 477-A of IPC have also been made out and as such, the accused persons be proceeded accordingly.
>
> xxx xxx xxx V. The said application deserves to be dismissed because the law relating to the bar engrafted in section 195(1)(b)(ii) of the Code of Criminal Procedure is not applicable to a case where forgery of the document was committed before the document was produced in the court. As such, the documents forgery of which have been committed were not the custodia legis."
>
> 43. There is no doubt that realising the difficulties in their way, the Appellants suddenly changed course, and applied to the Magistrate vide application dated 09.05.2011 to convert what was a properly drafted application under Section 195 read with section 340 of the CrPC, into a private complaint. A reading of the two complaints leaves no manner of doubt that they have been drafted keeping the ingredients of Sections 191 and 192 of the IPC alone in mind – the only argument from the Appellants now being that since certain debit notes were forged prior to their being introduced in the court proceedings, not only would the ratio in Iqbal Singh Marwah (supra) apply, but also that the ingredients of the "forgery" sections of the IPC have now been made out. While it is important to bear in mind that in genuine cases where the ingredients of forgery as defined in Section 463 of the IPC have been made out, and that therefore, a private complainant should not be left remediless, yet it is equally important to bear in mind the admonition laid down in an early judgment of this Court. Thus, in Basir-ul-

Huq and Ors. v. State of West Bengal (1953) SCR 836, this Court cautioned (at page 846):

> "Though, in our judgment, Section 195 does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included within the ambit of that section, it has also to be borne in mind that the provisions of that section cannot be evaded by resorting to devices or camouflages. The test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of the public servant is required. In other words, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, upon the ground that such latter offence is a minor offence of the same character, or by describing the offence as being one punishable under some other section of the Indian Penal Code, though in truth and substance the offence falls in the category of sections mentioned in Section 195 of the Criminal Procedure Code. Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of Section 195 prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a

wrong label on it."

44. Equally important to remember is that if in the course of the same transaction two separate offences are made out, for one of which Section 195 of the CrPC is not attracted, and it is not possible to split them up, the drill of Section 195(1)(b) of the CrPC must be followed. Thus, in State of Karnataka v. Hemareddy (1981) 2 SCC 185, this Court referred to a judgment of the Madras High Court (Re V.V.L. Narasimhamurthy AIR 1955 Mad 237) and approved its ratio as follows:

"7...In the third case, Somasundaram, J., has observed:

"The main point on which Mr Jayarama Aiyar appearing for the petitioner seeks to quash this committal is that on the facts an offence under Section 193 IPC is disclosed for which the court cannot take cognizance without a complaint by the court as provided under Section 195(1)(b) of the Criminal Procedure Code. The first question which arises for consideration is whether on the facts mentioned in the complaint, an offence under Section 193, IPC is revealed. Section 193 reads as follows:

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to 7 years, and shall also be liable to fine.

'Fabrication of false evidence' is defined in Section 192. The relevant portion of it is:

Whoever causes any circumstance to exist intending that such circumstance may appear in evidence in a judicial proceeding and that such circumstance may cause any person who in such proceeding is to form an opinion upon the evidence to entertain an erroneous opinion touching any point material to the result of such proceeding is said 'to fabricate false evidence'.

The effect of the allegations in the complaint preferred by the complainant is that the petitioner has caused this will to come into existence intending that such will may cause the judge before whom the suit is filed to form an opinion that the will is a genuine one and, therefore, his minor daughter is entitled to the property. The allegation, therefore, in the complaint will undoubtedly fall under Section 192 IPC. It will, therefore, amount to an offence under Section 193 IPC, i.e. fabricating false evidence for the purpose of being used in the judicial proceeding. There is no doubt that the facts disclosed will also amount to an offence under Sections 467 and 471, IPC. For prosecuting this petitioner for an offence under Sections 467 and 471, a complaint by the court may not be necessary as under Section 195(1)(b), Criminal PC a complaint may be made only when it is committed by a party to any proceeding in any court.

> Mr Jayarama Aiyar does not give up his contention that the petitioner, though he appears only a guardian of the minor girl, is still a party to the proceeding. But it is unnecessary to go into the question at the present moment and I reserve my opinion on the question whether the guardian can be a party to a proceeding or not, as this case can be disposed of on the other point viz. that when the allegations amount to an offence under Section 193 IPC, a complaint of court is necessary under Section 195(1)(a), of the Criminal PC and this cannot be evaded by prosecuting the accused for an offence for which a complaint of court is not necessary."
>
> 8. We agree with the view expressed by the learned Judge and hold that in cases where in the course of the same transaction an offence for which no complaint by a court is necessary under Section 195(1)(b) of the Code of Criminal Procedure and an offence for which a complaint of a court is necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in Section 195(1)(b) of the Code of Criminal Procedure should be upheld."
>
> 45. Bearing these admonitions in mind, let us now see as to whether the "forging" of the debit notes, so strongly relied upon by Shri Mishra as being offences under Sections 463 and 464 of the IPC, can at all be said to attract the provisions of these Sections.
>
> 46. Section 463 of the IPC speaks of "forgery" as being the making of a "false document" or "false electronic record", or a part thereof, to do the various things that are stated in that section. Unless a person is said to make a false document or electronic record, Section 463 does not get attracted at all. The making of a "false document" is then dealt with in Section 464 of the IPC. On the facts of the present case, we are not concerned with the categories of false documents identified under the heads "Secondly" and "Thirdly" of Section 464. Shri Mishra states that the making of the debit notes by the Respondents in order to falsely claim amounts owing to them would fall within the "First" category under Section 464.
>
> 47. The "First" category of Section 464 makes it clear that anyone who dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, can be said to make a false document.

Several judgments of this Court have held that assuming dishonesty or fraud, the second ingredient of the "First" category of Section 464 is that the document itself must be made by or by the authority of a person by whom or by whose authority the person who creates the forgery knows that it was not made. If the second ingredient is found missing, the offence of forgery is not made out at all. Thus, in Devendra v. State of U.P. (2009) 7 SCC 495, this Court set out the following facts:

"5. On or about 22-8-1997, a sale deed was executed by Appellants 1 and 2 in favour of Appellants 3 and 4. On 24-8-2005, a suit was filed by Respondent 2 and others for cancelling the aforesaid deed of sale dated 22-8-1997, which was registered as Civil Suit No. 382 of 2005. The said suit is still pending in the Court of the learned Civil Judge (Junior Division), Ghaziabad. In the said suit, however, it was averred that Solhu had four sons whereas in Suit No. 135 of 1982, it was stated that Solhu had five sons. The appellants filed an application under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure before the Court of the Deputy District Magistrate (First Class), Ghaziabad praying for dismissal of Suit No. 135 of 1982. An application for impleadment was also filed by the appellants in Civil Miscellaneous Writ Petition No. 17667 of 1985.

6. On or about 21-9-2005, Respondent 2 filed an application in Police Station Kavinagar, Ghaziabad wherein the City Magistrate by an order dated 17-9-2005 passed an order to hear the complainant and register a first information report. Thereafter, Respondent 2 filed a first information report in Police Station Sahni Gate on 21-9-2005. The appellants filed an application for quashing the said first information report before the High Court. It was marked as Criminal Miscellaneous Writ Petition No. 10568 of 2005."

48. This Court held that the sale deed executed did not constitute a "false document" under Section 464 of the IPC as follows:

"18. Section 463 of the Penal Code reads as under:

"463. Forgery.—Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery." According to Mr Das, making of a false document so as to support any claim over title would constitute forgery within the meaning of the said provision and as a document was created for the purpose of showing one-third share in the joint property by the appellants although they were not entitled to therefor, they must be held to have committed an offence.

19. Making of any false document, in view of the definition of "forgery" is the sine qua non therefor. What would amount to making of a false document is specified in Section 464 thereof.

What is, therefore, necessary is to execute a document with the intention of causing it to be believed that such document inter alia was made by the authority of a person by whom or by whose authority he knows that it was not made.

20. The appellants are the owners of the property. They have executed a sale deed. Execution of the deed of sale is not denied. If somebody is aggrieved by the false assertions made in the said sale deed, it would be the vendees and not the co-sharers. The appellants have not been alleged to be guilty of creating any false document."

49. In Mohd. Ibrahim v. State of Bihar (2009) 8 SCC 751, it was held that the execution of a sale deed by somebody in his own name qua property which is not his does not constitute making a "false document" under Section 464 of the IPC, because he does not impersonate the owner or falsely claim to be authorised or empowered by the owner to execute the deed on the owner's behalf. The Court held:

> "13. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.
>
> 14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:
>
> 1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.
>
> 2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.
>
> 3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a "false document", if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses.

15. The sale deeds executed by the first appellant, clearly and obviously do not fall under the second and third categories of "false documents". It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with

the land, amounted to committing forgery of the documents with the intention of taking possession of the complainant's land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor, colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."

50. In Mir Nagvi Askari v. CBI (2009) 15 SCC 643, vouchers that were made dishonestly by employees of a bank to profit a co-accused were held not to be "false documents" within the meaning of Section 464 of the IPC, as they were not made with the intention of causing it to be believed that the vouchers were made by or under the authority of somebody else. The facts necessary to attract Sections 463 and 464 of the IPC were set out by this Court in paragraph 3 as follows:

> "3. Accused 1, 2, 4 and 5 in their capacity as public servants, were working in Fort Branch of Andhra Bank. They were charged with abuse of their position and acting dishonestly and fraudulently, as a result whereof undue pecuniary advantage is said to have been procured by Accused 3 by way of crediting banker's cheques without them having been presented or sent for clearance and, thus, cheating Andhra Bank and dishonestly permitting substantial withdrawals from his current account by Accused 3. They are said to have prepared false documents and used them as genuine ones, with the intention to defraud and falsify entries in the books of accounts of the Bank. They are also charged with entering into the criminal conspiracy, as they, having been entrusted with the property of Andhra Bank, prepared credit and debit vouchers in favour of Accused 3, authorising credit of amounts of various cheques to the account of Accused 3 without having actually received any banker's cheques."

51. This Court, however, held that Section 464 of the IPC was not attracted, as follows:

> "164. A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else. The second criterion of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criterion of the said section is also not applicable to the present case. The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document.
>
> 165. The learned Special Judge, therefore, in our opinion, erred in holding that the accused had prepared a false document, which clearly, having regard to the provisions of the law, could not have been done.
>
> 166. Further, the offence of forgery deals with making of a false document with the specific intentions enumerated therein. The said section has been reproduced below.

"463. Forgery.—Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery." However, since we have already held that the commission of the said offence has not been convincingly established, the accused could not have been convicted for the offence of forgery. The definition of "false document" is a part of the definition of "forgery". Both must be read together. [Vimla (Dr.) v. Delhi Admn. [AIR 1963 SC 1572] Accordingly, the accused could not have been tried for offence under Section 467 which deals with forgery of valuable securities, will, etc. or Section 471 i.e. using as genuine a forged document or Section 477-A i.e. falsification of accounts. The conviction of the accused for the said offences is accordingly set aside."

52. It is thus clear that even if we are to put aside all the averments made in the two complaints (which clearly attract the provisions of Sections 191 and 192 of the Penal Code), and were to concentrate only on the debit notes that are said to have been "created" by the Respondents, it is clear that the debit notes were not "false documents" under Section 464 of the IPC, inasmuch they had not been made with the intention of causing it to be believed that they were made by or under

the authority of some other person. Since this basic ingredient of forgery itself is not made out, none of the sections that are sought to be relied upon in Chapter XVIII of the IPC can thus be said to be even prima facie attracted in the facts of this case.

53. It now remains to deal with some of the other submissions of Shri Mishra. The submission of Shri Mishra challenging the finding of the High Court that the Appellants did not file any proceedings under Section 482 of the CrPC to make a grievance that the complaint discloses other offences also, and that the Magistrate ought to have issued process for the same, has no legs to stand on. Whether a High Court acts suo motu under Section 482 of the CrPC is for the High Court to decide, being a discretion vested in the High Court to be exercised on the facts of the case. As we have seen, the facts of this case clearly show that the two complaints dated 11.08.2009 correctly invoked Section 195 read with Section 340 of the CrPC, and were then sought to be converted into private complaints, thereby attempting to fit a square peg in a round role. This has correctly been interdicted by the Sessions Court in revision, and by the High Court judgment under appeal.

54. Shri Mishra then argued that Surjit Singh (supra) had been relied upon by the High Court, which judgment was overruled in Iqbal Singh Marwah (supra). Though this is correct, the reasoning that Iqbal Singh Marwah (supra) is not applicable to the facts of the present case, to which the provisions of Section 195(1)(b)(ii) of the CrPC do not apply, is a finding made by the High Court in the impugned judgment which is unexceptional. For this reason also, incorrect reliance based on Surjit Singh (supra) would not avail the Appellants in the present case.

55. Shri Mishra then relied upon Ram Dhan v. State of U.P. & Anr. (2012) 5 SCC 536. In this case, the real ratio of the case can be found in paragraphs 6 to 8, in which this Court held:

> "6. We find no merit in the petition. After investigation, charge- sheet has been filed against the petitioner and others under Sections 177, 181, 182 and 195 IPC. The petitioner has suppressed the material fact and has not disclosed anywhere in this petition that he had approached the High Court under Section 482 CrPC for quashing of the charge-sheet, which stood rejected vide order dated 3-2-2010 [Ram Dhan v. State of U.P., Application under Section 482 No. 3310 of 2010, order dated 3- 2-2010 (All)] and the said order attained finality as has not been challenged any further. Thus, he is guilty of suppressing the material fact which makes the petition liable to be dismissed only on this sole ground.

7. We are of the view that it was necessary for the petitioner to disclose such a relevant fact. The learned Chief Judicial Magistrate while deciding the application under Section 239 CrPC has made reference to the said order of the High Court dated 3-2-2010. We had been deprived of the opportunity to scrutinise the charge-sheet as well as the order of the High Court dated 3-2-2010 and to ascertain as to whether the grievance of the petitioner in respect of the application of the provisions of Section 195 read with Section 340 CrPC had been raised in that petition and as to whether even if such plea has not been taken whether the petitioner can be permitted to raise such a plea subsequently.

8. In such a fact situation, the courts below may be right to the extent that the question of discharge under Section 239 CrPC was totally unwarranted in view of the order passed by the High Court on 3-2-2010. For the reasons best known to the petitioner, neither the copy of the charge-sheet nor of the order dated 3-2- 2010 passed by the High Court have been placed on record."

56. However, the Court goes on to state:

> "9. Be that as it may, the charge-sheet has been filed under Sections 177, 181, 182, 195 and 420 IPC. Section 177 IPC deals with an offence furnishing false information. Section 181 IPC deals with false statement on oath. Section 182 IPC deals with false information with intent to cause public servant to use his lawful power to the injury of another person. Section 195 IPC deals with giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.
>
> 10. At least the provisions of Sections 177 and 182 deal with the cases totally outside the court. Therefore, the question of attracting the provisions of Sections 195 and 340 CrPC does not arise. Section 195 IPC makes the fabrication of false evidence punishable. It is not necessary that the fabrication of false evidence takes place only inside the court as it can also be fabricated outside the court though has been used in the court.

Therefore, it may also not attract the provisions of Section 195 CrPC. (See Sachida Nand Singh v. State of Bihar [(1998) 2 SCC 493])

11. Mr Ashok Kumar Sharma, learned counsel appearing for the petitioner, has placed a very heavy reliance on the judgment of this Court in Abdul Rehman v. K.M. Anees-Ul-Haq [(2011) 10 SCC 696]. However, it is evident from the judgment relied upon that the judgment in Sachida Nand Singh, which is of a larger Bench, has not been brought to the notice of the Court. (See also Balasubramaniam v. State [(2002) 7 SCC 649])

12. The petitioner is guilty of suppressing the material fact. Admittedly, filing of successive petitions before the court amounts to abuse of the process of the court. Thus, we are not inclined to examine the issue any further.

13. Considering the composite nature of the offences, we do not see any cogent reason to interfere with the impugned order. The petition lacks merit and is, accordingly, dismissed."

57. From this case it is impossible to cull out a ratio that insofar as an offence under Section 195 IPC is concerned, the provisions of Section 195 CrPC would not be attracted. The Court's mind was on suppression of material facts, as a result of which, after making the statement made in paragraph 10, the Court then went on to state in paragraph 12 that they were not inclined to examine the issue any further in view of suppression of material facts, and the filing of successive petitions before the Court which amounts to abuse of process of the Court. One sentence torn out of context cannot

possibly avail the Appellant, given the detailed discussion in today's judgment, after considering all relevant authorities. This judgment also, therefore, does not carry the matter any further.

58. Shri Mishra, as an alternative argument, then stated that it was always open for the Magistrate or Court to waive an irregularity once a Magistrate assumes jurisdiction under Section 190(1)(a) of the CrPC even wrongly, and for this purpose, he referred to Section 460(e) of the CrPC. This provision is only attracted if a Magistrate, "not empowered" by law to take cognizance of an offence under clause (a) of Section 190(1) of the CrPC, takes such cognizance erroneously, but in good faith. The "empowerment" spoke of is the jurisdiction of the Magistrate to proceed with the complaint. Section 460 of the CrPC cannot, and does not, apply to cases in which Section 195 of the CrPC is involved inasmuch as Section 195 of the CrPC is an exception to Section 190 of the CrPC, and is an absolute bar to taking cognizance of the offences mentioned therein, unless the drill followed in Section 340 of the CrPC is observed. "Empowerment" obviously does not refer to a mandatory provision in the nature of a statutory bar to taking cognizance. This argument also has no legs to stand on, and is therefore rejected. So also the further argument that proceedings may be allowed to continue before the Magistrate, who can then frame charges based on the "forgery" sections of the IPC – we have held that the complaints read as a whole do not make out a case under Section 463 and 464 of the IPC, but instead clearly attract the provisions of 191 and 192 of the IPC. For these reasons also, this submission must needs be rejected.

59. As has been mentioned hereinabove, the concerned Judicial Magistrate by his order dated 13.10.2011 converted the two complaints into private complaints and then issued process under sections 191, 192 and 193 of the IPC. This judgment has been set aside in revision by the learned Additional Sessions Judge in his judgment dated 05.03.2013, in which the learned Judge held:

> "ORDER The revision petitions are allowed. The impugned orders of issuing process against the petitioners/original accused are quashed and set aside.
>
> The petitioners/accused in Criminal Revision Application No. 17/2012, 18/2012 and 20/2012 stand discharged, of offence punishable under section 193 read with 191 of Indian Penal Code and the petitioners/accused in Criminal Revision Application No. 16/2012 A. and 19/2012 stand discharged of an offence punishable under sections 193 read with 192 of Indian Penal Code and are hereby set at liberty. Both the complaint 81/P/09 and 82/P/09 stand dismissed."

60. Writ petitions that were filed against this order have been dismissed by the impugned judgment. It seems to us that the baby and the bath-water have both been thrown out together. While it is correct to say that the order of conversion and issuing of process thereafter on a private complaint may not be correct, yet the two complaints as originally filed can still be pursued. Once the Magistrate's order had been set aside, the learned Additional Sessions Judge ought to have relegated the parties to the position before the original complaints had been converted into private complaints. Since this has not been done, we find that Shri Mishra is right in stating that even though allegedly serious offences have been made out under Sections 191 and 192 of the IPC, yet the complaints themselves have now been quashed. We, therefore, reinstate the two complaints in their

original form so that they may be proceeded with further, following the drill of Sections 195 and 340 of the CrPC.

61. The appeals filed are disposed of accordingly.

.....J. (R. F. Nariman) .....J. (Navin Sinha) New Delhi.

2nd September, 2020.