Supreme Court of India
Bhima Razu Prasad vs State Rep. By Deputy ... on 12 March, 2021
Author: Mohan M. Shantanagoudar
Bench: Mohan M. Shantanagoudar, Vineet Saran

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2021
(arising out of S.L.P. (Criminal) No. 5102 of 2020)

Bhima Razu Prasad ...Appellant

Versus

State, rep. By
Deputy Superintendent of Police,
CBI/SPE/ACU-II …Respondent

WITH
CRIMINAL APPEAL NO. OF 2021
(arising out of S.L.P. (Criminal) No. 6720 of 2020)
AND
CRIMINAL APPEAL NO. OF 2021
(arising out of S.L.P. (Criminal) No. 6327 of 2020)

JUDGMENT

MOHAN M. SHANTANAGOUDAR, J.

1. Signature Not Verified Leave granted.

Digitally signed by GULSHAN KUMAR ARORA Date: 2021.03.13 11:16:59 IST Reason:

2. These appeals arise out of judgment dated 6.01.2020 in Crl. A. Nos. 1089, 1090 and 1091 of 2007 passed by the High Court of Judicature at Madras ("High Court"). Since they involve common facts and question of law, appeal arising out of S.L.P. (Crl.) No. 5102 of 2020 shall be taken as the leading case.

3. The brief facts leading to this appeal are as follows: 3.1 The Appellant/Accused No. 1 was working as Regional Manager (South) at Chennai with the Rashtriya Ispat Nigam Ltd. On 4.01.2001 case was registered against the Appellant under Section 120B read with Sections 420, 467, 468 and 471 of the Indian Penal Code, 1860 ("IPC"); and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 ("PC Act"). Subsequently, the officers of the Respondent investigative agency conducted search at the Appellant's residence on 24.01.2001 on the basis of search warrant issued by the Special Judge, Tis Hazari Court, New Delhi. During the course of this search, an amount of

Rs. 79,65,900/□("seized currency"), in addition to jewellery and property papers, was seized from the Appellant's residence. Since these assets were found to be disproportionate to the Appellant's known sources of income, on 9.03.2001 a separate disproportionate assets case was registered against him under Section 13(2) read with 13(1)(e) of the PC Act. It is this case that forms the factual crux of the present appeal. 3.2 During the course of investigation, Accused No. 2 V.S. Krishnan (Appellant in the connected appeal arising out of S.L.P. (Crl.) No. 6720 of 2020) and Accused No. 3 Murugesan (Appellant in the connected appeal arising out of S.L.P. (Crl.) No. 6327 of 2020) wrote letter dated 4.02.2002 to the Superintendent of Police, CBI/ACU□I claiming that the seized currency did not belong to the Appellant/Accused No. 1. They contended that Accused No. 2 had entered into agreement of sale dated 24.01.2001 to purchase properties from Accused No. 3, for which a sum of Rs 80 lakhs was to be paid in advance. Since Accused No. 2 was not available on that date for execution of the written agreement, he had entrusted the seized currency, along with a duplicate copy of the agreement signed by him, to the Appellant. The agreement was to be executed by Accused No. 3 in the presence of Appellant. However, since the Appellant's house was raided on that date, the money could not be paid and the agreement of sale could not be executed. Hence Accused Nos. 2 and 3 sought recovery of the seized currency.

Accused No. 2 produced the purported sale deed dated 24.01.2001 (in duplicate) typed out on stamp paper before the Investigating Officer in support of their claim. He also produced certain books of accounts to show that he had financial capacity to purchase the properties from Accused No. 3, in which entry was made on 20.01.2001 pertaining to payment of advance price of Rs 80 lakhs to Accused No. 3. However, pertinently, the Appellant had not taken any such defence at the time of search conducted in his house on 24.01.2001, nor had he produced the duplicate sale deed before the officers of the Respondent agency at that time.

3.3 Investigation conducted by the Respondent revealed that the market value fixed by the State Government in respect of the two properties described in sale deed dated 24.01.2001, was much below Rs 80 lakhs. Further, that the first property was equitably mortgaged with the Tamil Nadu Mercantile Bank Ltd. since 4.9.1998; whereas a portion of the second property had already been sold to other persons. That the license of Accused No. 4 stamp vendor S. Mohankumar, through whom the stamp papers of the sale deed were issued on 11.01.2001, was cancelled on 7.10.1992. No stamp paper of any denomination had been issued to him during the period of 1998 to 2001. Therefore, the Respondent's claim is that the Appellant conspired with Accused Nos. 2□4 to fabricate false deed of agreement for sale for the purpose of being shielded from legal action in the disproportionate assets case. Accordingly, the Learned Additional Special Judge for CBI Cases, Chennai ("Trial Court") framed charges against the Appellant and Accused Nos. 2□4 under Section 120B read with Section 193 of the IPC, in addition to charges under the PC Act already framed against the Appellant. Accused No. 4 died during the pendency of trial.

No objection was raised by the accused at the stage of taking of cognizance. However, during the course of trial, the Accused argued that complaint under Section 195(1)(b) of the Code of Criminal Procedure, 1973 ("CrPC") was necessary for prosecuting the case under Section 193, IPC. The Trial Court rejected this argument by referring to the opinion of the Constitution Bench in Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another, (2005) 4 SCC 370. Furthermore, based on

the evidence on the record, the Trial Court found that it was not proved that Accused No. 2 had entrusted the seized currency to the Appellant for holding in escrow till completion of sale transaction by Accused No. 3. Hence, the Trial Court convicted the Appellant under Section 13(2) read with Section 13(1)(e) of the PC Act; as well as Sections 120B and 193 of the IPC, and sentenced him to rigorous imprisonment for two years and payment of fine of Rs 1.5 lakhs. Accused Nos. 2 and 3 were convicted under Sections 120B and 193 of IPC and sentenced to rigorous imprisonment for one year and payment of fine of Rs 1 lakh each.

3.4 In appeal before the High Court, Accused Nos. 2 and 3 reiterated that the requirements of Sections 195(1)(b)(i) and 340 of the CrPC were not complied with prior to framing of charge under Section 193, IPC. Therefore, framing of charge without conduct of inquiry and making of written complaint by the Trial Court was illegal and without jurisdiction. The High Court rejected this contention and held that the procedure under Section 195(1)(b)(i) is only mandatory in offences which directly affect administration of justice, i.e. pertaining to documents which are custodia legis. Thus, the offence must be committed after a document is produced in evidence before the Court. Therefore Sections 195(1)(b)(i) and 340, CrPC will not be applicable in the present case where documents were fabricated during the investigative phase prior to their production during before the Trial Court.

The High Court relied upon the decision of a three□Judge Bench of this Court in Sachida Nand Singh and Another v. State of Bihar and Another, (1998) 2 SCC 493, and the later Constitution Bench decision in Iqbal Singh Marwah (supra) which affirmed the view taken in Sachida Nand Singh, while laying down its opinion. Though these decisions were rendered in the context of interpreting Section 195(1)(b)(ii) of the CrPC, the High Court held that Section 195(1)(b)(i) is analogous to the former provision. Hence the observations made in the aforementioned decisions are equally applicable to the present case. On merits, the High Court confirmed the Trial Court's finding that the Accused had conspired to fabricate false evidence for shielding Appellant/Accused No. 1 from prosecution in the disproportionate assets case. However, taking into consideration the advanced age of the Accused and the long passage of time since taking of cognizance of the case, the sentences awarded to the Accused were reduced. Nevertheless, the Accused have come before us in the present appeals challenging the impugned judgment of the High Court.

4. Learned senior counsel Mr. Basava Prabhu Patil, and learned counsel Mr. Amit Anand Tiwari and Mr. B. Karunakaran appearing for the Appellants/Accused, have forcefully argued that Section 195(1)(b)(i), CrPC cannot be construed as analogous to Section 195(1)(b)(ii). Therefore, the holding of the Constitution Bench in Iqbal Singh Marwah (supra) will not be applicable to the present case. They have relied upon Bandekar Brothers Pvt. Ltd. and Another v. Prasad Vassudev Keni and Others, AIR 2020 SC 4247 in support of their contentions. Thus, they have stressed that there is an absolute bar against taking of cognizance for the offences specified under Section 195(1)(b)(i), CrPC by any means except upon written complaint by the concerned Court. This is even if the offence of giving false evidence under Section 193, IPC was allegedly committed prior to proceedings before a Court of law. Therefore, the prosecution lodged by the Respondent agency against the Accused under Section 193, IPC is unsustainable.

4.1 Per contra, learned Additional Solicitor General appearing for the Respondent, Ms. Aishwarya Bhati, has contended that the holding in Iqbal Singh Marwah is applicable in respect of Section 195(1)(b)(i) of the CrPC as well. She has also sought to distinguish Bandekar Brothers (supra) and other decisions relied upon by the learned counsel for the Appellants/Accused on the ground that these were rendered in the particular facts of those cases, and will not apply to the present case.

5. Before we proceed further, we must first consider the relevant provisions of Sections 195 and 340, CrPC.

"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—

(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.

xxx (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." (emphasis supplied) It is well settled that Section 195(1)(b) creates a bar against taking cognizance of offences against the administration of justice for the purpose of guarding against baseless or vindictive prosecutions by private parties. The provisions of this Section imply that the Court is the only appropriate authority which is entitled to raise grievance in relation to perjury, forgery of documents produced before the Court, and other offences which interfere with the effective dispensation of justice by the Court. Hence, it for the Court to exercise its discretion and consider the suitability of making a complaint for such offences. However, there is a pertinent difference in the wording of Section 195(1)(b)

(i) and Section 195(1)(b)(ii) inasmuch as Section 195(1)(b)(ii) is restricted to offences which are committed in respect of a document which is "produced or given in evidence in a proceeding in any court". Whereas Section 195(1)(b)(i) applies to offences against public justice which are committed not only in any proceeding in any court, but also "in relation to" such proceeding. Whether such semantical difference bars the analogous application of precedents relating to Section 195(1)(b)(ii)

for interpreting Section 195(1)(b)(i) will be discussed by us later. 5.1 Section 340, CrPC prescribes the procedure to be followed for recording a complaint under Section 195(1)(b):

> "340. Procedure in cases mentioned in section
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> 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 interest 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;
>
> (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 the appearance for 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.

xxx (4) In this section, "Court" has the same meaning as in section 195." At this juncture, it is relevant to note that a Bench of this Court (consisting of one of us) in State of Punjab v. Jasbir Singh, (2020) 12 SCC 96, has referred the question of whether it is mandatory for the Court to conduct a preliminary inquiry and provide opportunity of hearing to the would-be-accused under Section 340, CrPC prior to making a complaint under Section 195, for consideration of a larger Bench. Therefore, we shall be limiting our findings to the issue of whether written complaint by the Trial Court was required under Section 195(1)(b)(i), CrPC in the present case, without delving extensively into the aspect of whether preliminary inquiry was required to be conducted prior to such complaint.

5.2 We also find it necessary to consider Sections 192 and 193 of the IPC for the purpose of deciding this matter. Both fall under Chapter XI, under the heading "Of False Evidence and Offences Against Public Justice", of the IPC.

"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". xxx

193. Punishment for false evidence. 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 seven years, and shall also be liable to fine... 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." In the present case, the allegation against Accused Nos. 2 and 3 is that they colluded with Appellant/Accused No. 1 to create a false sale deed, and gave false explanation of escrow arrangement amongst the three parties, to justify how the seized currency came to be in the Appellant's possession. This was done to exonerate the Appellant/Accused No. 1 and recover the seized currency at the stage of investigation itself, which is deemed to be "a stage of a judicial proceeding" under Explanation 2 of Section 193. Had the genuineness of the sale deed been accepted, the Respondent may have erroneously opined that the seized currency belonged to Accused No. 2, and consequently abandoned proceedings under Section 13(1)(e), PC Act against the Appellant. Therefore Section 193, IPC is squarely applicable to the allegations at hand.

6. Hence, the primary question of law that arises for our consideration in these appeals is whether Section 195(1)(b)(i), CrPC bars lodging of case by the investigating agency under Section 193, IPC, in respect of offence of giving false evidence which is committed at the stage of investigation, prior to production of such evidence before the Trial Court? This in turn, requires us to resolve the following sub□questions:

6.1 Whether an offence under Section 193, IPC committed at the stage of investigation, prior to production of the false evidence before the Trial Court by a person who is not yet party to proceedings before the Trial Court, is an offence "in relation to" a proceeding in any court under Section 195(1)(b)(i), CrPC?

6.2 Whether the words "stage of a judicial proceeding" under Explanation 2 to Section 193, IPC can be equated with "proceeding in any court" under Section 195(1)(b)(i), CrPC?

I. General overview of the law on Section 195(1)(b)(ii)

7. Before answering the questions stated in paragraph 6 (supra), it may be useful to refer to the landmark precedents of this Court which have considered similar issues arising under Section 195(1)(b)(ii), CrPC. The issue of whether Section 195(1)(b)

(ii), CrPC is applicable to documents which are forged prior to their production in Court is no longer res integra. This Court in Sachida Nand Singh (supra) has held that Section 195(1)(b)(ii) read with Section 340(1), CrPC will only apply in respect of offences which are committed during the time

when the document concerned was custodia legis or in the custody of the Court. The reasoning given by the Court was as follows:

> "5. The contention of the appellants is that if the offence alleged is with respect to a document which reached the Court then the aforesaid bar operates, no matter whether the offence was committed before or after its production in court. In other words, according to the appellants, the decisive event for attracting the bar is the production of the document in the Court.

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7. Even if the clause is capable of two interpretations we are inclined to choose the narrower interpretation for obvious reasons. Section 190 of the Code empowers "any magistrate of the first class" to take cognizance of "any offence" upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the magistrate, and the general right of a person to move the court with a complaint is to that extent curtailed. It is a well-recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise (Abdul Waheed Khan v. Bhawani [AIR 1966 SC 1718: (1966) 3 SCR 617]).

8. That apart it is difficult to interpret Section 195(1)

(b)(ii) as containing a bar against initiation of prosecution proceedings merely because the document concerned was produced in a court albeit the act of forgery was perpetrated prior to its production in the Court. Any such construction is likely to ensue unsavoury consequences. For instance, if rank forgery of a valuable document is detected and the forgerer is sure that he would imminently be embroiled in prosecution proceedings he can simply get that document produced in any long-drawn litigation which was either instituted by himself or somebody else who can be influenced by him and thereby pre-empt the prosecution for the entire long period of pendency of that litigation. It is a settled proposition that if the language of a legislation is capable of more than one interpretation, the one which is capable of causing mischievous consequences should be averted... xxx 10...It has to be noted that Section 340 falls within Chapter XXVI of the Code which contains a fasciculus of "Provisions as to offences affecting the administration of justice" as the title of the chapter appellates. So the offences envisaged in Section 195(1)(b) of the Code must involve acts which would have affected the administration of justice.

11. The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in court or given in evidence in a proceeding in that Court. In other words, the offence should have been committed during the time when the document was in custodia legis.

12. It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the court

records.

13. The three-Judge Bench of this Court in Patel Laljibhai Somabhai case [(1971) 2 SCC 376 : 1971 SCC (Cri) 548 : AIR 1971 SC 1935] has interpreted the corresponding section in the old Code, [Section 195(1)(c)] in almost the same manner as indicated above... ...The issue involved in Patel Laljibhai Somabhai case [(1971) 2 SCC 376 : 1971 SCC (Cri) 548 : AIR 1971 SC 1935] related to the applicability of that sub-section to a case where forged document was produced in a suit by a party thereto, and subsequently a prosecution was launched against him for offences under Sections 467 and 471 of IPC through a private complaint. The ratio of the decision therein is the following: (SCC Headnote) "The offences about which the court alone 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. It, therefore, appears to be more appropriate to adopt the strict construction of confirming the prohibition contained in Section 195(1)(c) only to those cases in which the offences specified therein were committed by a party to the proceeding in the character as such party."

14. After stating so their Lordships proceeded to observe that the legislature could not have intended to extend the prohibition in the sub-section to offences committed by a party to the proceedings prior to his becoming such a party. According to their Lordships, any construction to the contrary would unreasonably restrict the right of a person which was recognized in Section 190 of the Code." (emphasis supplied) Aforementioned observations of this Court in Patel Laljibhai Somabhai (supra), as cited in Sachida Nand Singh (supra), make the import and purpose of Section 195(1)(b), CrPC clear. The provision is intended to bar the right to initiate prosecution only where the offence committed has a reasonably close nexus with the court proceedings, such that the Court can independently determine the need for an inquiry into the offence with reference to its own records. Therefore, the offence must be such that directly impacts administration of justice by the Court. This would certainly be the case if the document was in the custody of the Court at the time of commission of offence. However, the bar under Section 195(1)(b)(ii) cannot be read as operating even in cases where the offence against administration of justice was committed in respect of a document

1) outside of the Court,

2) by a person who was not yet party to the Court proceedings, and,

3) at a time long before the production of the document before the Court.

The same would not have a "reasonably close nexus" with the court proceedings.

Though these observations in Sachida Nand Singh were made in the context of Section 195(1)(b)(ii), we find that they have useful application in interpreting Section 195(1)(b)(i) as well. The prohibition contained in Section 195(1)(b)(i) should not be extended to provide protection to a person who has

been accused of tendering false evidence during the investigative stage prior to becoming a party to the court proceedings and producing such evidence before the Court.

8. The view taken in Sachida Nand Singh was subsequently affirmed by the Constitution Bench in Iqbal Singh Marwah (supra). In that case, it was alleged that the appellants had created a fictitious will to divest the respondents out of their share in the disputed property. Since the respondents' application under Section 340, CrPC was not disposed of, they filed a criminal complaint for prosecuting the appellants under Sections 192 and 193, as well as Sections 463 and 471, IPC. The Metropolitan Magistrate in that case held that both Sections 195(1)(b)(i) and (ii), CrPC operated as a bar against taking cognizance of these offences. The Sessions Judge and the High Court, relying on Sachida Nand Singh, held that the bar under Section 195(1)(b)(ii) would not apply where forgery of a document was committed before producing the said document in court. However, it was noticed that Sachida Nand Singh appeared to conflict with an earlier three-Judge Bench decision in Surjit Singh and Others v. Balbir Singh, (1996) 3 SCC 533. Surjit Singh had held that the bar against taking cognizance under Section 195(1)(b)(ii) would apply even if the offences stipulated therein were committed prior to production of the document before the Court, if such document was subsequently produced before the Court. The Constitution Bench clarified the position of law as follows:

> "10...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.

11...The fact that the procedure for filing a complaint by court has been provided in Chapter XXVI dealing with offences affecting administration of justice, is a clear pointer to the legislative intent that the offence committed should be of such type which directly affects the administration of justice viz. which is committed after the document is produced or given in evidence in court. Any offence committed with respect to a document at a time prior to its production or giving in evidence in court cannot, strictly speaking, be said to be an offence affecting the administration of justice.

12. It will be useful to refer to some earlier decisions touching the controversy in dispute which were rendered on Section 195 of the Code of Criminal Procedure, 1898 (for short "the old Code")...

14. A Full Bench of the Allahabad High Court in Emperor v. Kushal Pal Singh [AIR 1931 All 443 : 32 Cri LJ 1105 (SB)] considered the scope of the aforesaid provision and held, that clause (c) of Section 195(1) applies only to cases where an offence is committed by a party, as such, to a proceeding to any court in respect of a document which has been produced or given in evidence in such proceeding. It was held that an offence which has already been committed by a person who does not become a party till, say, 30 years after the commission of the offence, cannot be said to have been committed by a party within the meaning of clause (c). A three-Judge Bench of this Court in Patel Laljibhai Somabhai v. State of Gujarat after examination of the controversy in considerable detail observed that as a general rule the courts consider it expedient in the interest of justice to start prosecutions as contemplated by Section 476 (of the old Code which now corresponds to Section 340 CrPC) only if there is a reasonable foundation for the charge and there is a reasonable likelihood of conviction. The requirement of a finding as to the expediency is understandable in case of an offence alleged to have been committed either in or in relation to a proceeding in that court in case of offences specified in clause (b) [of the old Code corresponding to clause (b)(i) CrPC] because of the close nexus between the offence and the proceeding. In case of offences specified in clause (c), they are required to be committed by a party to a proceeding in that court with respect to a document produced or given in evidence in that court. The court approved the view taken by the Allahabad High Court in Emperor v. Kushal Pal Singh and held as under in para 7 of the Report: (Patel Laljibhai Somabhai case [(1971) 2 SCC 376 : 1971 SCC (Cri) 548] , SCC pp. 376-77) “(i) The underlying purpose of enacting Sections 195(1)(b) and (c) and Section 476 seems to be to control the temptation on the part of the private parties to start criminal prosecution on frivolous vexations 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 or the administration of public justice which is the direct and immediate object or the victim of these offences. 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 who might ultimately suffer can persuade the civil court to file complaint...

18. The other case which is the sheet anchor of the argument of learned counsel for the appellants is Surjit Singh v. Balbir Singh. The facts as stated in paras 1 and 11 of the Report show that a criminal complaint was filed by the respondent under Sections 420, 467, 468, 471 read with 120-B IPC alleging that the appellants had conspired and fabricated an agreement dated 26-7-1978 and had forged the signature of Smt Dalip Kaur and on the basis thereof, they had made a claim to remain in possession of a house. The Magistrate took cognizance of the offence on 27-9-1983. The appellants thereafter filed a civil suit on 9-2-1984 wherein they produced the agreement. It may be noticed that the cognizance by the criminal court had been taken much before filing of the civil suit wherein the agreement had been filed. During the course of discussion, the Court not only noticed Gopalakrishna Menon [(1983) 4 SCC 240: 1983 SCC (Cri) 822] but also quoted extensively from Patel Laljibhai. Reference was then made to Sanmukhsingh v. R. [AIR 1950 PC 31: 51 Cri LJ 651] and Sushil Kumar v. State of Haryana [1987 Supp SCC 654: 1988 SCC (Cri) 136 : AIR 1988 SC 419] wherein it has been held that the bar of Section 195 would not apply if the original document had not been produced or given in evidence in court. Then comes the passage in the judgment (para 10 of the Report) which we have reproduced in the earlier part of our judgment. The observations

therein should not be understood as laying down anything contrary to what has been held in Patel Laljibhai but was made in the context that bar contained in Section 195(1)(b)

(ii) would not be attracted unless the original document was filed. It is for this reason that in the very next paragraph, after observing that the cognizance had been taken prior to filing of the civil suit and the original agreement in court, the view taken by the High Court that the Magistrate could proceed with the trial of the criminal case was upheld and the appeal was dismissed.

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.

33. In view of the discussion made above, we are of the opinion that Sachida Nand Singh 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." (emphasis supplied) Curiously, though the facts of Iqbal Singh Marwah also required a determination as to the applicability of Section 195(1)

(b)(i), the Constitution Bench did not express any specific finding on this point. This was perhaps because the limited point for consideration before the Bench was the apparent conflict between Sachida Nand Singh and Surjit Singh (supra). However, it can nevertheless be seen that the Constitution Bench did not interpret Section 195(1)(b)(ii) in isolation, but linked its construction with the overall scheme under Sections 195(1)(b) and 340, CrPC. The Court reiterated the test laid down in Sachida Nand Singh, i.e., that the offence in respect of which only the Court can make a complaint must be one which has a direct correlation to, or a direct impact on, proceedings before a court of justice. It is for this reason that only the relevant Court is vested with the right to consider the desirability of complaining against the guilty party.

The Court further noted that the situation wherein the offence as enumerated under Section 195(1)(b)(ii) has been committed earlier, but the document is produced later in court is not in consonance with the object of Sections 195(1)(b)(i) either. Even in Surjit Singh, this Court had held on the facts of that case, that since the criminal Court had taken cognizance of the offence long before filing of the original document before the civil Court, the bar under Section 195(1)(b)(ii) would not apply.

Similar to Sachida Nand Singh, the Constitution Bench also referred to the observations made by the three□Judge Bench in Patel Laljibhai Somabhai (supra) on Sections 192(b) and 192(c) of the Code of Criminal Procedure, 1898 ("1898 Code") which corresponded to Section 192(1)(b)(i) and (ii) of the present CrPC respectively. This Court in Patel Laljibhai Somabhai had noted that even under Section 192(b) of the 1898 Code (corresponding to Section 195(1)(b)(i), CrPC), the offence committed is one with a "close nexus" to the court proceedings. II. Import of the Words " in relation to" in Section 195(1)(b)

(i), CrPC.

9. This brings us to the phrase "in relation to any proceeding in any Court", which appears in Section 195(1)(b)(i), CrPC but is absent in Section 195(1)(b)(ii). It may be argued that this phrase makes the scope of Section 195(1)(b)(i) wider than Section 195(1)

(b)(ii). The words "in relation to" under Section 195(1)(b(i) appear to encompass situations wherein false evidence has been fabricated prior to being produced before a Court of law, for the purpose of being used in proceedings before the Court. Therefore, it may not be possible to apply the ratio of Iqbal Singh Marwah by way of analogy to Section 195(1)(b)(i) in every case.

10. For further elucidation on this point, we may turn to the recent decision of this Court in Bandekar Brothers (supra). The appellants in that case claimed that the respondents/accused had given false evidence and forged debit notes and books of accounts in civil court proceedings between the parties. They had initially filed application under Section 340, CrPC before the relevant Judicial Magistrate. However, they later sought to convert this into private complaints, in reliance upon Iqbal Singh Marwah (supra). The respondents objected on the ground that the bar under Section 195(1)(b)(i) could not be circumvented. Subsequently, the appellants took the plea that offences under Section 195(1)(b)(ii) were also made out:

> "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." 10.1 This Court thereafter proceeded to distinguish between the offence of fabricating false evidence under Sections 192 and 193, IPC and the offence of forgery. It noted that the averments made by the appellants in their complaints pertained exclusively to giving of false evidence and did not disclose the ingredients of forgery as defined under the IPC. Hence, this Court in Bandekar Brothers upheld the respondents' contentions, and opined that Iqbal Singh Marwah would not benefit the appellants in that case. Even though the false evidence was created outside of the Court, it was by the appellants' own admission, created "in relation to" proceedings before the Court. Thus, this Court held that:
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> "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 Code of Criminal Procedure. Where the facts mentioned in a complaint attracts the provisions of

> Section 191 to 193 of the Indian Penal Code, Section 195(1)(b)(i) of the Code of Criminal Procedure applies. What is important is that once these Sections of the Indian Penal Code 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.
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> 22. Contrasted with Section 195(1)(b)(i), Section 195(1)(b)(ii) of the Code of Criminal Procedure speaks of offences described in Section 463, and punishable under Sections 471, 475 or 476 of the Indian Penal Code, 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)." (emphasis supplied) 10.2 We fully agree with the aforementioned reasoning. The presence of "in relation to" under Section 195(1)(b)(i) means that Iqbal Singh Marwah would not have blanket application to every case where a complaint is lodged in respect of an offence specified under that Section. However, on the facts of Bandekar Brothers, this was not a situation in which the offence complained of did not have a "reasonably close nexus" with the court proceedings. The offence of giving false evidence was committed by the respondents, who were party to the court proceedings, for the purpose of leading the Court to form an erroneous opinion on a point material to the result of the proceedings. Hence it could be said that though the offence was not committed during the course of the court proceedings, it was certainly committed "in relation to" such proceedings.

11. Similar circumstances were present in Kailash Mangal v. Ramesh Chand (Dead) Through Legal Representative, (2015) 15 SCC 729 and Narendra Kumar Srivastava v. State of Bihar and Others, (2019) 3 SCC 318, which were the decisions relied upon by this Court in Bandekar Brothers (supra). In Kailash Mangal, it was alleged that the appellant in that case had filed a false affidavit before the civil court for getting a civil suit decreed in his favour. The respondent filed a private complaint under Section 340, CrPC alleging offence punishable under Sections 193 and 419, IPC. The Division Bench observed that:

> "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." (emphasis supplied) Therefore, this Court expressly observed in Kailash Mangal that since the document was filed during the course of a proceeding which was already pending before the court, the offence could be said to have been committed "in relation to" such proceeding for the purpose of Section 195(1)(b)(i), CrPC. The requirement of reasonable nexus between the offence and the proceeding before the Court was clearly satisfied in that case.

11.1 In Narendra Kumar Srivastava (supra), the appellant had filed a private complaint contending that the respondent officials had produced a false show□cause affidavit in the contempt petition filed by the appellant. Resultantly, the High Court dropped the contempt case. The Division Bench held that Section 195(1)(b)(i), CrPC covers a different category of offence and is therefore distinct from Section 195(1)(b)(ii). Hence Sachida Nand Singh (supra) would not be applicable, and cognizance could not have been taken on the basis of a private complaint. However, on the facts of that case, this was again a situation wherein at the first instance, the Court was allegedly persuaded to form an opinion based on certain false evidence which was produced by persons who were already party to the proceedings. This is a completely different factual matrix from the present case.

12. Indeed, at this juncture it must be noted that even Sachida Nand Singh (supra) and Iqbal Singh Marwah (supra) were rendered in the context of balancing the right of private parties to initiate complaints in respect of forged documents, with protecting parties to civil suits from frivolous or vexatious prosecutions. In neither of the abovementioned decisions has this Court authoritatively considered the specific issue of preserving the right of an investigative agency, such as the Respondent in the present case, to initiate complaints against persons who have fabricated false evidence during the course of criminal proceedings.

13. The moot point therefore, as mentioned in Para Nos. 6 & 6.1, is whether offence committed under Section 193, IPC during the stage of investigation, prior to commencement of proceedings before the Trial Court, by a person who is not yet party to proceedings before the Trial Court, is an offence committed "in relation to" such proceedings for the purpose of the bar under Section 195(1)(b)(i), CrPC?

14. The construction of the words "in relation to" must be controlled by the overarching principle applicable to Section 195(1)(b), CrPC as stated in Patel Laljibhai Somabhai (supra) and Sachida Nand Singh (supra), which was affirmed by the Constitution Bench in Iqbal Singh Marwah (supra). That is, even if the offence is committed prior to giving of the fabricated evidence in court, it must have a direct or reasonably close nexus with the court proceedings.

15. Looking to the decision in Bandekar Brothers (supra), is true to say that Section 195(1)(b)(i), CrPC may be attracted to the offence of fabricating false evidence prior to its production before the Court, provided that such evidence is led by a person who is party to the court proceedings, for the purpose of leading the Court to form a certain opinion based on such evidence. The bar against taking of cognizance under Section 195(1)(b)(i) may also apply where a person who is initially not a party to the court proceedings fabricates certain evidence, and

1) subsequently becomes a party and produces it before the Court; or;

2) falsely deposes as a witness before the Court on the strength of such evidence, for the purpose of causing the Court to form an erroneous opinion on a point material to the result of the proceedings.

16. However, where a person fabricates false evidence for the purpose of misleading the investigating officer, this may not have any direct nexus with the subsequent court proceedings. There is an indirect nexus inasmuch as if the investigating agency does not suspect any wrongdoing, and the Court commits the case for trial, the evidence will be produced for the Court's perusal and impact the judicial decision-making process. However, it may be equally possible that even if the fabricated evidence appears sufficiently convincing, the investigating agency may drop proceedings against the accused and divert its time and resources elsewhere. Therefore, the offence may never reach the stage of court proceedings. Further, if it subsequently comes to light that the evidence was falsely adduced, it will be the investigating agency which will suffer loss of face and be forced to conduct a fresh investigation. Hence, though the offence is one which affects the administration of justice, it is the investigating agency, and not the Court, which is the aggrieved party in such circumstance.

17. In this regard, we consider it beneficial to refer to the portion of the opinion expressed by the Constitution Bench in Iqbal Singh Marwah (supra) as to why a narrow interpretation of Section 195(1)(b)(ii), CrPC was necessary to avoid impracticality or injustice in its implementation:

> "23...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.

24. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340 CrPC contemplates holding of a preliminary enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the

appeal is bound to take time. Section 343(2) confers a discretion upon a court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are challenged in successive appellate fora which are time-consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343(2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us from accepting the broad interpretation sought to be placed upon clause (b)(ii).

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26. Judicial notice can be taken of the fact that the courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in clause (b)(ii) is either not placed for trial on account of non-filing of a complaint or if a complaint is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided..." (emphasis supplied) It is possible that Courts may be more pro-active in making complaints under Section 195(1)(b)(i), CrPC upon application made by the concerned investigative agencies, than in those preferred by private parties. The former being public authorities would enjoy more credence in seeking inquiry into their claims. Therefore, the aforementioned reasons assigned by the Constitution Bench in Iqbal Singh Marwah for adopting a narrow construction of Section 195(1)(b)(ii), CrPC may not be strictly applicable in the present case. However, the general principles of statutory interpretation laid down by the Constitution Bench should not be disregarded. This is especially given that the Court did not consider Section 195(1)(b)(ii) separately but provided a holistic view of the scheme under Section 195(1)(b).

17.1 Just like a private party who has been a victim of forgery committed outside the precincts of the Court, the investigative agency should not be left remediless against persons who have producing false evidence for the purpose of interfering with the investigation process. Moreover, the present case concerns offences alleged to have been committed under the PC Act. Public interest and the reputation of the State will suffer significant harm if corrupt public servants are facilitated by third parties in hiding their assets from scrutiny. Hence any interpretation which negates against the speedy and effective trial of such persons must be avoided.

17.2 The application of the bar under Section 195(1)(b)(i), CrPC to situations such as the present case can lead to two scenarios. The first is one in which the investigative agency, on the basis of false/fabricated material drops the case. Subsequently, it is brought to their notice that the evidence was falsified. Second, the investigative agency at that very stage suspects that the material produced before them is bogus or forged in nature. In both scenarios, the Court has not had an opportunity to

consider the allegedly fabricated evidence, as trial has not yet commenced in respect of the offence. Hence it would not be possible for the Court to independently ascertain the need for lodging a complaint under Section 195(1)(b)(i) read with Section 340, CrPC when the evidence alleged to have been falsified is not even present on its records. Rather, it is the investigating agency which is best placed to verify and prove whether such falsification has taken place, through what means and for what purpose.

17.3 In case the bar under Section 195(1)(b)(i) is applied to offences committed during the course of investigation, the Court may think it fit to wait till the completion of trial to evaluate whether a complaint should be made or not. Subsequently, the Court may be of the opinion that in the larger scheme of things the alleged fabrication of evidence during investigation has not had any material impact on the trial, and decline to initiate prosecution for the same. The investigation agency cannot be compelled to take a chance and wait for the trial court to form its opinion in each and every case. This may give the offender under Section 193, IPC sufficient time to fabricate more falsehoods to hide the original crime. Further, irrespective of the potential impact that such false evidence may have on the opinion formed by the trial court, the investigating agency has a separate right to proceed against the accused for attempting to obstruct fair and transparent probe into a criminal offence. Thus, we are of the view that it would be impracticable to insist upon lodging of written complaint by the Court under Section 195(1)(b)(i), CrPC in such a situation.

18. It must be clarified that the aforementioned opinion expressed by us is limited to factual situations such as the present case wherein the fabricated evidence has been detected prior to commencement of the trial, or without such trial having been initiated in the first place. The same may not apply for example, where the investigation agency on the basis of false evidence given by a third party happens to wrongfully implicate a person, other than the real perpetrator, for a particular offence. Subsequently, the Court during the course of trial proceedings may take judicial notice of such defect in the investigation process and make a complaint under Section 195(1)(b)(i), CrPC. Since by this stage, the evidence has been produced before the Court, and contains potential for directly impacting the formation of the Court's opinion on the innocence or guilt of the accused person, invoking the bar under Section 195(1)(b)(i) may not give rise to much difficulty. However, at this juncture, we decline to make any conclusive finding on this aspect, as the facts of the present appeal do not require us to consider the same. It is left open to future Benches of this Court to settle this issue if it so arises before them.

19. In this regard, we also find it necessary to distinguish the three❑Judge Bench decision of this Court in Arvindervir Singh v. State of Punjab and Another, (1998) 6 SCC 352 from the present case. In that case it was alleged that the investigating officers themselves (including the appellant therein) had abducted and murdered an advocate and his family, and falsely implicated another person for this offence. The case involving the falsely accused person had already been committed for trial when this Court, in writ proceedings initiated by the Punjab and Haryana Bar Association, directed the CBI to conduct an independent investigation [Punjab and Haryana High Court Bar Association, Chandigarh Through its Secretary v. State of Punjab and Others, (1994) 1 SCC 616]. Subsequently, after the CBI submitted its report, it was directed to file the necessary challan before the trial court [Punjab & Haryana High Court Bar Association v. State of Punjab and Others, (1996) 4 SCC

742)]. The CBI then filed a chargesheet before the designated trial court in that case under Sections 193 and 211, IPC.

This Court in Arvindervir Singh clarified that challan was to be filed directly by the CBI only in respect of the offence of abduction and murder alleged to have been committed by the appellant□ accused. So far as the offence punishable under Sections 193 and 211, IPC was concerned it was for the designated trial court to make a written complaint to a Magistrate having jurisdiction. However, the three□Judge Bench did not discuss the scope and ambit of "in relation to" under Section 195(1)(b)(i), CrPC. Moreover, since this decision was rendered prior to the Constitution Bench decision in Iqbal Singh Marwah (supra), the three□Judge Bench did not have the benefit of referring to the observations made in that case. Hence the decision in Arvindervir Singh will not have any application to the case at hand as it involved a completely different set of factual and legal issues.

III. Whether "stage of a judicial proceeding" under Explanation 2 to Section 193, IPC is synonymous with "proceeding in any court" under Section 195(1)(b)(i), CrPC?

20. The last point that remains to be considered is the effect of Explanation 2 to Section 193, IPC which deems an investigation preliminary to a proceeding before a Court of Justice to be a "stage of a judicial proceeding" for the purposes of the Section. Such deeming provision applies even though that investigation may not take place before a Court of Justice. This gives rise to the question of whether an offence committed during the investigation, which is a "stage of a judicial proceeding" under Explanation 2, Section 193, IPC, would be an offence committed "in relation to any proceeding in any Court" under Section 195(1)(b)(i), CrPC.

20.1 The purpose of Explanation 2 to Section 193, IPC is evidently to ensure that a person who fabricates false evidence before an investigating or inquiring authority prior to the trial of the case does not escape penalty. This encompasses all nature of proceedings, whether civil or criminal. However, whether the commission of such offence would require the complaint of a Court under Section 195(1)(b)(i) would depend upon the authority before whom such false evidence is given. For example, if a person gives false evidence in an inquiry before the Magistrate under Section 200, CrPC, that would undoubtedly be an offence committed before a Court under Section 195(1)(b)(i), CrPC. However, this would not be the case where false evidence is led before an investigating officer prior to the Court having taken cognizance of the offence or the case being committed for trial. 20.2 The object and purpose of Section 195(1)(b), CrPC must be borne in mind whilst determining whether the fabrication of false evidence during a stage of a judicial proceeding amounts to having made such fabrication in relation to a proceeding before the Court. At the cost of repetition, it must be emphasized that Section 195(1)(b) is meant to restrict the right to make complaint in respect of certain offences to public servants, or to the relevant Court, as they are considered to be the only party who is directly aggrieved or impacted by those offences. Furthermore, for the purpose of Section 195(1)(b)(i), CrPC, there must be an intention on part of the alleged offender to directly mislead the Court into forming a certain opinion by commission of offence under Section 193, IPC. Though a criminal investigation is certainly a stage of a judicial proceeding insofar as it may culminate in issue of process and trial against the accused, it would not be a proceeding in relation to a certain Court under Section 195(1)(b)

(i), CrPC before the Court has even taken judicial notice of such investigation. The difference between a "stage" of a judicial proceeding and the judicial proceeding itself must be emphasized in this regard.

21. We find it necessary to distinguish certain decisions of this Court which have adjudicated upon the correlation between the words "judicial proceeding" and "proceeding in any court" for further clarifying our position on this point. In Lalji Haridas v. State of Maharashtra, (1964) 6 SCR 700, a Constitution Bench of this Court considered whether proceedings before an Income Tax Officer under the Indian Income Tax Act, 1922 would be proceedings in any court under Section 195(1)(b) of the 1898 Code, which was the corresponding section in that Code to Section 195(1)(b)(i), CrPC. Section 37(4) of the 1922 Act provided that proceedings before the Income Tax authority shall be deemed to be "judicial proceedings" (and not merely a stage of such proceedings) under Section 193, IPC. It was in this context that the majority of the Constitution Bench (K.C. Dasgupta J., dissenting) held that the expressions "judicial proceeding" under the 1922 Act and "proceeding in any court" under Section 195(1)

(b), 1898 Code are synonymous. Therefore, a private complaint would not be maintainable in respect of a false statement given on oath before the Income Tax Officer.

21.1 In Babita Lila and Another v. Union of India, (2016) 9 SCC 647, a Division Bench of this Court similarly considered the jurisdiction of the Deputy Director of Income Tax to make a complaint under Section 195(1)(b), CrPC in respect of false statements given on oath during a search operation conducted under the Income Tax Act, 1961. The discussion in this case was primarily concerned with whether the Deputy Director would be the competent appellate authority authorized to make a complaint under Section 195(4), CrPC. However, the Division Bench, referring to Lalji Haridas, made an ancillary observation that such search operation is deemed to be a "judicial proceeding" under Section 193, CrPC, and that the relevant Income Tax authority would be deemed to be a civil court for the purpose of Section 195, CrPC. This is as per the express provision made to the effect under Section 196 of the 1961 Act. 21.2 In Chandrapal Singh and Others v. Maharaj Singh and Another, (1982) 1 SCC 466, a three❑Judge Bench of this Court was faced with the issue of whether 195(1)(b)(i), CrPC would bar a complaint under Sections 193, 199 and 201 of the IPC alleging making of false statements in affidavit before the Rent Control Officer under the U.P, Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. Similar to the aforementioned income tax statutes, Section 34(2) of the 1972 Act provided that the District Magistrate or the prescribed authority holding an inquiry under the Act shall be deemed to be a Civil Court within the meaning of Sections 480 and 482 of the 1898 Code. Moreover, that proceedings before such authority shall be judicial proceedings under Section 193, IPC.

The three❑Judge Bench noted that under the 1972 Act, the Rent Control Officer was authorized to exercise the powers and functions of the District Magistrate. Hence, in view of the specific provision made under Section 34(2) of the 1972 Act, the Rent Control Officer would also be deemed to be a civil court and the proceedings before him would be judicial proceedings. Therefore, if any false evidence was given during the course of such proceedings, only the Rent Control Officer was authorized to make complaint of the same under Section 195(1)(b)(i), CrPC. Even otherwise, on the

facts of the case, the three-Judge Bench found that abuse of criminal process had taken place and observed that "chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking the jurisdiction of the criminal court" (Chandrapal Singh, (supra), paragraph 14).

21.3 It can be seen from the above discussion that this Court has, in some instances, opined that where the law deems proceedings before a certain authority to be "judicial proceedings", the same would be considered as "proceedings in any court" under Section 195(1)(b)(i), CrPC. Therefore, if the offence under Section 193, IPC is committed before such an authority, the written complaint of that authority is mandatorily required for trial of the offence. However, the facts of the decisions in Lalji Haridas (supra), Babita Lila (supra) and Chandrapal Singh (supra), are clearly distinguishable from the present appeal as they all involve 1) False statements made on oath or in affidavits, 2) in a judicial proceeding and 3) before an authority which is expressly deemed under law to be a "court". None of the aforequoted cases were concerned with fabrication of evidence before an investigating authority under a penal statute.

22. In the present case, pursuant to recovering the seized currency from the Appellant's house on 24.01.2001, the Respondent initiated investigation under Section 13(2) read with Section 13(1)(e), PC Act against him. Accused Nos. 2 and 3, at the behest of the Appellant, wrote letter dated 4.02.2002 to the Superintendent of Police, CBI stating that the seized currency was held by the Appellant as part of an escrow arrangement amongst the parties. Hence, they sought that the money should be paid back to Accused No. 2. They additionally produced a false sale deed dated 24.01.2001 and certain books of account in support of their claim. There was no involvement of the Trial Court at this stage in as much as the letter dated 4.02.2002 and the sale deed were obviously intended to convince the investigation agency that the Appellant had not accumulated disproportionate financial assets. Had the Respondent accepted the veracity of the contents of this letter, they would not only have dropped the investigation against Appellant/Accused No. 1 but also wrongfully returned the seized currency under the mistaken impression that it was the property of Accused No. 2. The Accused No. 2 would have then facilitated the return of the Appellant's ill-gotten gains back to his custody. The authorities would be none the wiser and the loss of Rs. 80 lakhs from the exchequer would have flown under the radar. 22.1 Therefore in the present case, it is not the Trial Court but the Respondent authority/agency which has been directly impacted due to fabrication of evidence by the Appellants/accused. The Appellants' intention was not to mislead the Trial Court, at least not at the first instance. Rather, their goal was to ensure that the Appellant/Accused No. 1 was cleared of wrongdoing at the stage of investigation itself. It was after being charged under Section 193, IPC, that the Appellants/accused reiterated the fictitious escrow arrangement story before the Trial Court so as to prove their innocence. Hence it cannot be said that the offence under Sections 120B read with 193, IPC was committed by the Appellants "in relation to" a proceeding in a court under Section 195(1)(b)(i), CrPC. 22.2 Section 2(i), CrPC defines "judicial proceeding" as including any proceeding in the course of which evidence is or may be legally taken by oath. The investigation under the PC Act was admittedly a stage of a judicial proceeding by virtue of Explanation 2 to Section 193, IPC. However, neither was the fabricated evidence in the present case given on oath before the investigating officer, nor is the investigating authority under the PC Act deemed to be a "court" for the purpose of Section 195(1)

(b), CrPC. Hence, the decisions in Lalji Haridas (supra) and Chandrapal Singh (supra) will have no applicability to the present case. Thus, it can be concluded that the investigation conducted by the Respondent under the PC Act cannot be equated with a proceeding in a court of law under Section 195(1)

(b)(i), CrPC, though it is deemed to be a stage of a judicial proceeding under Section 193, IPC.

22.3 Had this been a case wherein the Respondent had not developed any suspicion against Accused Nos. 2 and 3, and the Trial Court had subsequently discovered the subterfuge caused by them, we may have taken a different view. As we have noted in paragraph 18 (supra), where the fabrication of evidence has escaped the scrutiny of the investigating agency, and the case is subsequently brought to trial, such evidence would have direct bearing on the trial court's opinion and hence the bar under Section 195(1)(b)(i), CrPC may be applicable. However, in the present case, the investigating agency has been sagacious enough to detect the commission of offence under Section 193, IPC at the preliminary stage. Therefore, as stated by us in paragraph 17.3 (supra), it would be unjust and impracticable to insist upon the requirement of an independent inquiry and written complaint by the Trial Court in such a scenario.

23. Thus, the questions of law stated in paragraph 6 (supra) stand answered against the Appellants/accused. Even on merits, we do not find any valid reason to interfere with the concurrent findings of the Trial Court and the High Court. The High Court has rightly observed that the Appellant/Accused No. 1 had not raised the defence of holding the money in escrow for Accused Nos. 2 and 3 at the time of search conducted at his house on 24.01.2001. The supposed agreement of sale was also not produced. This defence was raised by Accused Nos. 2 and 3 at a highly belated stage on 4.02.2002, almost a year after the recovery of the seized currency, though the Appellant had corresponded with Accused No. 2 in May–June, 2001. It is improbable in the ordinary course of conduct that a person would wait so long to claim an amount of approximately Rs. 80 lakhs which was required for completion of sale transaction. The stamp paper on which the sale deed was made was also proved to be illegal. Hence it is apparent that the Appellants/accused entered into an elaborate conspiracy and attempted to create a false circumstance of escrow transaction for the purpose of shielding Appellant/Accused No. 1 from prosecution. In fact, the High Court has shown great lenity by reducing the sentences awarded to the Appellants/accused in view of their advanced age and delay in completion of the trial. In view of the gravity of the offence, no further benefit can be granted to them in this regard. Conclusions

24. The questions of law formulated in paragraph 6 (supra) are answered as follows:

Section 195(1)(b)(i), CrPC will not bar prosecution by the investigating agency for offence punishable under Section 193, IPC, which is committed during the stage of investigation. This is provided that the investigating agency has lodged complaint or registered the case under Section 193, IPC prior to commencement of proceedings and production of such evidence before the trial court. In such circumstance, the same would not be considered an offence committed in, or in relation to, any proceeding in any Court for the purpose of Section 195(1)(b)(i), CrPC.

24.1 The appeals are accordingly dismissed both on law and on merits. The sentence awarded by the High Court shall be set□off against the period of imprisonment, if any, already undergone by the Appellants. The Appellants are directed to surrender within two weeks for serving out the rest of their sentence, if they are not already in custody. The Registry is further directed to expeditiously release the amount of fine, if any, deposited before this Court. If any arrears of fine are remaining, the Appellants shall pay the same within a period of not more than four weeks from the date of this order.

.....J.

(MOHAN M. SHANTANAGOUDAR) .....J.

(VINEET SARAN) NEW DELHI;

MARCH 12, 2021