Madras High Court
Bhima Razu Prasad vs State on 25 October, 7

Crl. A.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 17.12.2019 | Pronounced on 06.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NOS. 1089, 1090 & 1091 OF 2007

Bhima Razu Prasad .. Appellant i

V.S. Krishnan .. Appellant i

Murugesan .. Appellant i

- Vs -

State, rep. By
Deputy Superintendent of Police
SBI/SPE/ACU-II
New Delhi. .. Respondent

Criminal Appeals filed u/s 374 (2) of the Code of Criminal Procedure, against the judgment and order dated 25.10.07, passed by the learned Addl. Special Judge for CBI Cases, Chennai, in C.C. No.10 of 2002.

For Appellants : Mr. S.Ashok Kumar, SC, for
M/s. A.Amarnath in CA 1089/07
Mr. V.Gopinath, SC, for
Mr. R.Vignesh in CA 1090/07
Mr.J.Shankar in CA 1091/07

For Respondent : Mr. K.Srinivasan, Spl. PP (CBI

Crl.

COMMON JUDGMENT

The accused/appellants herein, along with one other accused, were arrayed as A-1 to A-4 and they were charged and tried before the learned Addl. Special Judge for CBI Cases, Chennai, in C.C. No.10/2002 for the offences u/s 120 (B) r/w 193 and 193 IPC and Sections 13 (2) r/w 13 (1) (e) of the Prevention of Corruption Act and on being found guilty, the appellants herein were convicted and sentenced as under :-

Accused	Section	Sentence
A-1	U/s 13 (2) r/w 13 (1) (e) of PC Act	Convicted and sentenced to imprisonment for a period of two years and to pay a fine of Rs.50,000/-, in default to undergo imprisonment for a period of three months.
	U/s 120 (B) IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.50,000/-, in default to undergo imprisonment for a period of three months.
	U/s 193 IPC	Convicted and sentenced to undergo imprisonment for a period of one year and to pay a fine of Rs.50,000/-, in default to undergo imprisonment for a period of three months.
A-2	U/s 120 (B) IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.50,000/-, in default to undergo imprisonment for a period of three months.
	U/s 193 IPC	Convicted and sentenced to undergo imprisonment for a period of one year and to pay a fine of Rs.50,000/-, in default to undergo imprisonment for a period of three months.
A-3	U/s 120 (B) IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.50,000/-, in default to undergo imprisonment for a period of three months.
	U/s 193 IPC	Convicted and sentenced to undergo imprisonment for a period of one year and to pay a fine of Rs.50,000/-, in default to undergo imprisonment for a period of three months.

The trial court ordered the sentences to run concurrently. Out of the confiscated amount of Rs.79,65,000/-, while the amount of Rs.76,00,000/=, which was determined to be the disproportionate asset at the hands of A-1 was ordered to be confiscated and remitted to the Government u/s 452 Cr.P.C., the balance amount of Rs.3,65,900/- was ordered to be returned to A-1, who was entitled to get the said amount. Since A-4 died pending trial, the charges framed against A-4 stood abated. The appellants, who are A-1 to A-3, aggrieved by the said conviction and sentence, have preferred the present appeals. For the sake of convenience, the accused/appellants herein along with the deceased accused will be referred to as A-1 to A-4.

2. The brief facts, necessary for disposal of these appeals, are as hereunder :-

Initially, a case in RC 1/2001 was registered against A-1 u/s 120 (B) r/w 420, 467, 468, 471 IPC and Section 13 (2) r/w 13 (1) (d) of the Prevention of http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 Corruption Act (for short 'PC Act') on 4.1.01. Subsequent to the registration of the case, search was conducted by the officers of the respondent headed by P.W.49 at the residence of A-1 on 24.1.01 on the basis of the search warrant issued by the Special Judge, Tis Hazari Court, New Delhi. In the said search an amount of Rs.79,65,900/- in addition to property papers and jewellery were also seized and search list, Ex.P-5 was prepared.

3. The premises of A-1 was searched by P.W.49 on 24.1.01 in the presence of P.W.2 and others. P.W.2, was a member of the search party and who had signed in the inventory of the materials seized, which is marked as Exs.P-6 and P-

7. Ex.P-6 pertains to the seizure of gold jewellery and is marked as Annexure 'B'; Ex.P-7 pertains to the seizure of currency and other household articles and are marked as Annexure 'A' and Annexure 'C' respectively. The seized currency notes were marked as M.O.1 series. On execution of the search warrant, the warrant along with the articles seized, as shown in the search list, Ex.P-5, along with the currency seized were produced before the Court and were left in the custody of the court. Pursuant to the said search, decision was taken to register a disproportionate assets case against A-1 and, accordingly, after obtaining the requisite sanction, Ex.P-126, from P.W.50, the appropriate authority, the present http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 crime, viz., RC ACO II/2001 A 0004 was registered based on the above search of the premises of A-1 on 9.3.01 and investigation of the case was carried on by P.W.52.

4. P.W.52, on taking up investigation of the case examined the witnesses and recorded their statements. He examined P.W.49, who had conducted the raid on the premises of A-1 and recorded his statement. P.W.52, examined the officials of the office in which A-1 was working and obtained the salary particulars of A-1 pertaining to the check period 1994 to 2001. The receipt of the letter, Ex.P-138, dated 4.2.02, written by A-2 and A-3, addressed to the Superintendent of Police, Mr.Arun Sharma, CBI/ACU-II, which was received on 7.2.02, led to the seizure of the copies of the two agreements, Exs.P-92 and P-93, alleged to have been entered into between A-2 and A-3 for the purchase and sale of the properties in respect of which the amount of about Rs.80 Lakhs, was held by A-1 at the behest of A-2, which was seized from the residence of A-1 during the raids and, therefore, A-2 and A-3 made request for return back of the money seized from the residence of A-1. Pursuant to the investigation, A-2 produced Exs.P-139 and P-140, the accounts books of Madras Chemical Company, belonging to A-2 to establish the source and capacity of A-2 to pay the said amount to A-3. http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 Investigation on this phase of the matter was taken up by P.W.52 and in this regard, P.W.52 examined the ledger and cash books of Madras Chemical Company and also the account books with regard to the monthly sale of commodity by A-2. P.W.52 also examined P.W.s 31, 34, 35, 36 and 37 relating to the claim of A-3 that they are the owners of the flats who had orally requested A- 3 to sell the said flats, which was given by A-3 to them towards the dues payable by A-3 and return the sale proceeds back to them. P.W.52, on seizing the agreements, alleged as being part of the sale and purchase transaction, obtained the specimen impression of the seal that was affixed on

the stamp papers, Exs.P- 129 and P-130, which were allegedly sold by A-4 (since deceased) for the purpose of executing the necessary agreements. The specimen writings of A-2 and A-3 were taken for the purpose of comparison with the questioned agreements/documents, which are marked as Exs.P-133 and P-134. Subsequent to P.W.52 handing over charge to the subsequent investigating officer, viz., one D.S.Dagar, the said officer filed the final report against the accused, viz., A-1 to A- 4 for the offences referred to supra.

5. The accused/appellants herein were furnished with the copies of the relied upon documents u/s 207 Cr.P.C. and the trial court framed charges for the _____ Crl. A. Nos. 1089, 1090 & 1091/2007 offences u/s 120 (B) r/w 193 and 193 IPC against A-1 to A-4 and u/s 13 (2) r/w 13 (1) (d) of the PC Act against A-1. When questioned, the accused pleaded not guilty.

6. To prove the case, the prosecution examined P.W.s 1 to 52, marked Exs.P-1 to P-144 and M.O.1, the list of seized currency notes. When the accused/appellants herein were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same as false. On the side of the defence, though no oral evidence was adduced, however, Exs.D-1 to D-6, viz., salary slip of A-1 for Aug., 1994 and Jan., 1995, statement of bank account of one A.Avanthi, bank statement in respect of the spouse of A-1, copy of the sale deed dated 29.5.97 and sanction order dated 9.7.02, were marked. The trial court, after hearing the arguments on either side and after considering the materials, both oral and documentary, placed on record, convicted and sentenced A-1 to A-3 as noted above, and the appeal insofar as A-4 stood abated, A-4 having died pending trial. Aggrieved by the said conviction and sentence recorded by the trial court, the present appeals have been preferred by the respective appellant.

 _____ Crl. A. Nos. 1089, 1090 & 1091/2007

7. Mr.S.Ashok Kumar, learned senior counsel appearing for A-1, at the outset submitted that the trial court, on misconception and not adverting to the materials available on record, has recorded the conviction, which deserves interference at the hands of this court. It is the contention of the learned senior counsel for A-1 that Exs.P-6 and P-7, which contains Annexures 'A', 'B' and 'C', which are supposed to be the currency notes, the jewellery and the household articles seized during the search of the premises of A-1, reveal that while Annexure 'B' and Annexure 'C', which are marked as Ex.P-6 and Ex.P-7, pertaining to the jewellery and the household articles, have been countersigned by the officers raiding the premises, A-1 and the witnesses, who were present at the time of raid, however, curiously, Annexure 'A', which also forms part of Ex.P-7 does not contain the signature of any person, be it the officers of the raiding party, A-1 or the witnesses, who were present at the time of the raid. It is therefore the submission of the learned senior counsel for A-1 that the seizure of currency is shrouded with suspicion and, therefore, no sanctity can be attached to the said seizure. It is the further contention of the learned senior counsel for A-1 that not only signature of any person is missing in Annexure 'A', but equally the amount confiscated do not tally properly, as there is material discrepancy with regard to the actual confiscation of five hundred rupee notes. Though it is _____ Crl. A. Nos. 1089, 1090 & 1091/2007 noted that 200 Nos., of five hundred rupee notes were seized, however, curiously the total amount has

been marked as Rs.20,000/=.

8. It is the further submission of the learned senior counsel for A-1 that no where during the seizure A-1 has accepted the amount seized as belonging to him and, more particularly, A-1, while he was examined by P.W.52, has categorically stated that the amount does not belong to him, which is evident from the deposition of P.W.49 and P.W.52. It is the further submission of the learned senior counsel that the currency seized were not placed before the court for custody and was tabled before the trial court only at the time of trial. It is the submission of the learned senior counsel that it is the duty of the prosecuting agency to place the seized materials with the custody of the court at the earliest point of time and non-compliance of the same renders the seizure of currency by the prosecuting agency to grave doubt.

9. It is the further submission of the learned senior counsel for A-1 that P.W.9, who was the employee in the office where A-1 was also employed has deposed in detail about the service particulars of A-1. P.W.9 has categorically deposed that each and every monetary transaction of A-1, be it pertaining to http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 movable or immovable property, has been scrupulously entered in the service register, which clearly shows the clean hands of A-1 and that this prosecution has been initiated only with vested interests to malign the character of A-1. The service register pertaining to A-1 clearly demolishes the entire case of the prosecution, as the entries in the service register is in consonance with the assets acquired by A-1 from and out of his lawful earnings, as has been spoken to by P.W.9.

10. It is the further submission of the learned senior counsel for A-1 that the amounts towards the various immovable properties as also the movable properties have been inflated, which is even evident from the findings recorded by the court below. It is the further submission of the learned senior counsel that A-1 had written to A-2 on 6.6.01 about the seizure of the money amounting to the tune of Rs.80 Lakhs from his residence, which was left with the custody of A-1 for being paid to A-3 by A-2 in pursuant to the sale and purchase of the flats and, therefore, had insisted upon A-2 and A-3 to wait for some time so as to get the amount realised from the hands of the investigating agency. It is the further submission of the learned senior counsel that the charge u/s 120 (B) IPC has not been established in a manner known to law and, therefore, invocation of 120 (B) http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 r/w 193 IPC is only for the purpose of roping in A-2 and A-3, but for whom, the prosecution has not even an iota of evidence connecting A-1 with amassing disproportionate assets.

11. In fine, it is the submission of the learned senior counsel for A-1 that the trial court has not taken into consideration all the material factors into consideration, but has merely been guided by the fanciful figures projected by the prosecution as disproportionate asset, which amount has also not been proved to have been seized from the residence of A-1 and, therefore, the findings recorded by the trial court deserves to be negatived and the appeal deserves to be allowed.

12. Placing arguments on behalf of A-2, Mr. V.Gopinath, learned senior counsel, assailed the findings of the trial court on two grounds. The first contention of the learned senior counsel for A-2 is that the capacity of A-2 to buy the properties from A-3 stands fully established by the books of

accounts and ledger books produced by A-2. It is the submission of the learned senior counsel that the capacity of A-2 to purchase the properties from A-3 has been spoken to by P.W.s 27, 28, and 30. It is the further submission of the learned senior counsel http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 that P.W.52, the investigating officer has also spoken about the capacity of A-2 to buy the properties from A-3. Reference was invited to the deposition of P.W.52, who has deposed that the investigation revealed that A-2 was involved in the business of dealing with sulphur and sulphur related products and the books of accounts of A-2's firm revealed receipts over and above Rs.80 Lakhs. Learned senior counsel drew the attention of this Court to Ex.P-85, the ledger extract, which reveals the amount of Rs.80 Lakhs having been paid to A-3. Learned senior counsel drew the attention of this Court to Exs.P-87, 88 and 89 relating to sales tax returns filed by A-2 for the period 1999-2000, 2000-2001 to show that A-2 was well placed and financially sound to purchase the properties. Learned senior counsel also placed reliance on Ex.P-140, the auditors report certifying the financial capacity of A-2.

13. Learned senior counsel, on the prosecution initiated against A-2 and A- 3, questioned the legality of the said prosecution by adverting to Section 195 and 340 Cr.P.C. It is the contention of the learned senior counsel that in addition to the charge u/s 120 (B) IPC, charge u/s 193 IPC has been framed against A-2 and A-

3. Learned senior counsel drew the attention of this Court to the offence u/s 193 IPC and submitted that the offence relates to punishment for false evidence given http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 by any person during any stage of a judicial proceeding or fabrication of false evidence for the purpose of being used in any stage of a judicial proceeding. It is submitted by the learned senior counsel that for framing a charge u/s 193 IPC, the ingredients as envisaged u/s 195 and 340 Cr.P.C. needs to be fulfilled. Section 195 Cr.P.C. deals with taking cognizance for prosecution for contempt of lawful authority of public servants for offences against public justice and for offence relating to documents given in evidence. Particular reference was drawn to Section 195 (1) (b) (i), which mandates that no court shall take cognizance of any offence punishable under any of the following sections of the Indian Penal Code, viz., 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. The procedure for invoking action for offences affecting the administration of justice is contemplated under Section 340 Cr.P.C. It is the submission of the learned senior counsel that the procedure mandated u/s 340 Cr.P.C. insofar as offences affecting administration of justice as provided u/s 195 (1)(b)(i) Cr.P.C. is that it relates to taking action by the court 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, where the Court can take action as contemplated therein on the basis of a preliminary inquiry and http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 complaint. It is the submission of the learned senior counsel that the charge has been framed against A-2 and A-3 u/s 193 IPC, which is not in relation to any offence affecting administration of justice for prosecution for contempt of lawful authority of a public servant. No offence having been committed during any judicial proceeding as contemplated under the above provisions of the Code, the court not having taken any action nor given any complaint thereof as the court alone being the aggrieved party in respect of offence u/s 193 IPC, the charge u/s 193 IPC against A-2 and A-3 is

illegal and without jurisdiction. Excluding the Court, no other party can raise a complaint for an offence insofar as Sections 192 and 193 IPC are concerned.

14. It is the submission of the learned senior counsel that two different cases have been clubbed together, one against A-1 and the other against A-2 and A-3 by invoking Section 120 (B) IPC to show conspiracy. However, when conspiracy not having been proved in a manner known to law, there is total misjoinder of charges and misjoinder of parties and, therefore, the prosecution of A-2 and A-3 for the offence u/s 193 r/w 120 (B) IPC is illegal and without jurisdiction and, therefore, the conviction and sentence awarded by the trial court is liable to be set aside.

15. Learned counsel appearing for A-3, while adopting the arguments of the learned senior counsel insofar as the contention regarding the charge framed u/s 193 IPC is concerned, further submitted that possession of properties by A-3 is not in dispute. Though it is the stand of the prosecution that the value quoted for the purchase of the properties is a highly escalated price, however, it is the contention of the learned counsel for A-3 that even the guideline value has not been taken into consideration by the prosecution to arrive at the market value. The value for which the properties sought to be sold is on the basis of the market value and not on the guideline value. Further, the properties belong to A-3 stands proved by the evidence of P.W.s 31, 34, 35, 36 and 37, who are purchasers of the property, in lieu of the amounts borrowed by A-3 from them. The evidence of P.W.s 31, 34, 35, 36 and 37 conclusively prove that they have authorised A-3 to sell the property and give the sale proceeds insofar as their share is concerned. The above evidence clearly show that the agreements entered into between A-2 and A-3 stands proved, which in turn goes to prove the amount of Rs.80 Lakhs at the hands of A-1 is not that of A-1, but has been given by A-2 for being paid to A-3 on the signing of the agreements. The agreements of sale have been entered into between A-2 and A-3 orally for which formal written agreement was to be entered into on 24.1.01 and the amount of Rs.80 Lakhs in this regard has been given to A-1 by A-2 to be paid to A-3, as A-2 was not available on the said date. It is further proved by the fact that A-2 has signed the agreement and left it with A-1 for A-3 to sign the same and get the amount from A-1. It is further contention of the learned counsel that the value of the properties, for which agreements have been entered into between A-2 and A-3, have not been proved by the prosecution in a manner known to law as the prosecution has not proved the value of the properties by marking any valuation report and in fact no steps have been taken by the prosecution to value the properties. It is therefore submitted by the learned counsel for A-3 that he being the owner of the properties which is sought to be sold to A-2, having not been disputed and the value of the properties having not been established, the prosecution is estopped from challenging the sale value agreed between A-2 and A-3 as being done for the purpose of helping A-1 from escaping the clutches of the prosecution.

16. Per contra, Mr.Srinivasan, learned Special Public Prosecutor, appearing for the respondent countered the submissions advanced on behalf of the appellants by submitting that the sale agreements, sought to be entered into between A-2 and A-3 is only a fictitious transaction in order to

destabilise the prosecution launched against A-1. Learned Special Public Prosecutor submitted that the search at the residence of A-1 started at 9.00 a.m. and ended at about 6.50 p.m. on 24.1.01. When the search started, the members at the residence of A-1 including the spouse of A-1 were present. Within a few minutes of the start of the search, A-1 came to the house. There was no whisper from A-1 about any agreements between A-2 and A-3 for which the amount seized from the house of A-1 has been held by him. Further, throughout the search, no agreements, alleged to have been entered into between A-2 and A-3 were seized from the house of A-1 nor any agreements were produced by A-1. However, when questioned, A-1 had merely informed the search party that the money does not belong to him. However, A-1 did not amplify the said statement and inform as to whom the money belongs to. It is the further submission of the learned Special Public Prosecutor that for a period of more than four months, A-1 kept silent and then out of blue sky, on 6.6.01, A-1 had written the letter, Ex.P-141 to A-2 stating that the amount of Rs.80 Lakhs, which had been entrusted by A-2 with A-1 for the purpose of handing over to A-3 on A-3 signing the agreements, is in the custody of CBI and will be hopefully returned after completion of investigation. It is the submission of the learned Special Public Prosecutor that at no point of time, http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 either to P.W.49 or P.W.52, has A-1 divulged the details as to whom the money belongs to. However, in the above letter, A-1 has stated that the above transaction has been narrated to CBI and that they are aware of it. This is not only in clear contradiction of the stand of A-1, but also reveals the intricate web, being cast by A-1 to A-3 to wriggle out of the predicament and also wrest control of the amount of about Rs.80 Lakhs, admittedly seized by the CBI.

17. It is the further submission of the learned Special Public Prosecutor that not only till 6.6.01, the date on which A-1 wrote the letter to A-2, had A-2 kept silent about the money, after having been in touch with A-1 even before 6.6.01, however, A-2 and A-3, together, have only written to the Superintendent of Police, CBI, on 4.2.02, almost after a period of six months from the date on which the letter was written by A-1 to A-2, and almost a year after the money was seized by the respondent from A-1, claiming the money as belonging to A-2, which was entrusted with A-1 for the purpose of giving the same to A-3 on A-3 signing the agreements. It is the contention of the learned Special Public Prosecutor that it is only after a period of almost 13 months, inspite of very many personal discussions and telephonic discussions and also the written communication of A-1 to A-2, A-2 and A-3, together, have written the letter to http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 the respondent, which only clearly reveals the time taken for them to hatch the conspiracy, which is a post-conspiracy, subsequent to the raid, in order to enable A-1 to wriggle out of the prosecution but at the same time salvage the money, which was in the custody of the respondent.

18. It is contended by the learned Special Public Prosecutor that the above post-conspiracy between the conspirators would be much evident from the agreements, alleged to be entered into between A-2 and A-3. The stamp paper for the purpose of executing the agreements were said to have been purchased from one Mohan Kumar, who was arrayed as A-4, who died pending trial. It is submitted by the learned Special Public Prosecutor that the stamp paper is alleged to have been purchased from the said A-4 on 11.1.01, as is evident from the date written on the stamp papers, Exs.P-92 and P-93. However, A-4, who was a stamp vendor, his license as a stamp vendor was cancelled as early

as on 7.10.92, as is evident from the deposition of P.W.29 and the cancellation of the license and the rejection of the appeal is evident from Exs.P-96 and P-97. Attention is also drawn by the learned Special Public Prosecutor to Ex.P-91, the letter written by the Treasury Officer, District Treasury, Chennai to the Superintendent of Police, CBI, stating that no stamp papers were issued to A-1 http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 during the period 1998-1999 and 2000-2001 and that the stamp vending licence of A-4 was cancelled as early as on 7.10.92. That being the case, the stamp papers sold by the said A-4 does not have the sanctity of a legal document and the act of A-4 in giving those stamp papers to A-2 and A-3 for the purpose of fabricating the said agreements clearly show that the conspiracy was hatched post-raid and the agreements were prepared at a much later point of time, which is the reason that almost a year was taken by A-2 and A-3 to write the letter to the respondent claiming the money. This only shows the clear intention of A-2 to A-3 to aid A-1 wriggle out of the charges and also to recover the money, admittedly seized by the respondent from the residence of A-1.

19. On the legality of the prosecution launched against A-2 and A-3 by framing charge u/s 193 IPC, it is the submission of the learned Special Public Prosecutor that Explanation 2 abridged to Section 193 IPC would lead this Court to the irrefutable conclusion that the investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of judicial proceeding, though that investigation may not take place before a Court of Justice. It is the submission of the learned Special Public Prosecutor that during the investigative stage, the fabrication of documents have been done for the purpose of giving http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 false evidence, for being used in a Court of Justice and, therefore, for all practical purposes, the fabrication of evidence is only for the purpose of giving false evidence in a Court of Justice during the course of a judicial proceeding and, therefore, even the pre-investigative stage, when the law enforcement agency conducts investigation ultimately leading to the culmination of a judicial proceeding would very much fall within the ambit of a judicial proceeding and, therefore, the charge u/s 193 IPC would stand attracted. Therefore, not only in foresight, had the investigating agency framed the charge u/s 193 IPC, but in hindsight as well, the trial court has maintained the charge u/s 193 IPC as the trial court thought it fit that the investigative stage, by itself, is a part of the judicial proceeding and, therefore, the offence charged against A-2 and A-3 u/s 193 IPC could very well be maintained. There is no mis-joinder of parties nor mis-joinder of charges and the appellants cannot take umbrage under a technicality to wriggle out of the charge. The trial court, not only on clear understanding of law, but also on appreciation of all the materials available on recorded, has rendered a judicious finding, which falls within the four corners of law and, therefore, the said conviction and sentence recorded by the trial court does not warrant any interference.

http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007

20. This Court heard the learned senior counsel appearing for A-1 and A-2 and the learned counsel appearing for A-3 and also the learned Special Public Prosecutor appearing for the respondent and perused the materials available on record to which the court's attention was drawn and also the provisions of law adverted to by the learned senior counsel appearing for the parties.

21. Though the main issue in the present case relates to the amount seized from the residence of A-1, which is alleged to be disproportionate to his known sources of income, and the collusion of A-2 and A-3 with A-1 to thwart the prosecution's attempt by fabricating documents as if the amount was given by A- 2 to A-1 for being to be held in escrow and to be given to A-3 towards the property purchase transaction, however, the prosecution having framed a charge u/s 193 IPC against A-2 and A-3, the moot question that needs to be considered is whether the charge framed u/s 193 IPC against A-2 and A-3 is hit by the bar u/s 195 r/w 340 Cr.P.C. Therefore, before dealing with the other factual aspects of the matter, this Court would dwell into the legal issue raised relating to the bar for prosecuting A-2 and A-3 u/s 193 IPC and whether the same is sustainable or not.

22. To answer the legal issue as to the bar for prosecuting A-2 and A-3 u/s 193 IPC, it is but necessary to advert to offence falling u/s 193 IPC and also to Section 195 and 340 Cr.P.C., wherein procedure for dealing with an offence u/s 193 IPC is contemplated. For better clarity, Section 193 IPC and Sections 195 and 340 Cr.P.C. are quoted hereunder :-

> “Section 193 IPC :-
>
> 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, 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.
>
> Section 195 Cr.P.C. :-
>
> 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 subclause

(i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

Section 340 Cr.P.C. :-

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 http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 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 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 (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.

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23. While it is contended on behalf of A-2 and A-3 that the bar u/s 195 (1)

(b) (i) Cr.P.C., stands attracted and cognizance, if any, could be taken insofar as offences u/s 193 IPC is concerned as per the procedure contemplated u/s 340 Cr.P.C. by the court alone, on the complaint by the court, as power is vested with the court to raise a complaint in case of offences u/s 193 IPC, however, it is countered by the respondent contending that the bar, as envisaged u/s 195 Cr.P.C., relates only to fabrication of documents/giving of false evidence in court, and not for any alleged illegal acts done prior to taking cognizance by the court.

24. A reading of Section 193 IPC reveals that any person, who 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 as prescribed under the said provision.

25. Section 195 (1) (b) (i) Cr.P.C. deals with taking of cognizance by the Court and it prescribes that no court shall take cognizance of any offence punishable under any of the following sections of the Indian Penal Code, namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive and 228, http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 when such offence is alleged to have been committed in, or in relation to, any proceeding in any court.

26. Section 340 Cr.P.C. lays down the procedure to be followed with regard to cases mentioned u/s 195 Cr.P.C., wherein procedures have been laid down for the court to follow in case the court, after preliminary inquiry, thinks fit and necessary that complaint needs to be made thereof with regard to matters affecting the administration of justice.

27. The issue, therefore, before this Court is whether the charge u/s 193 IPC can be framed only when false evidence or fabrication of evidence happens during the course of a judicial proceeding and in such a case, but for a complaint by the court relating to such false evidence or fabrication, no charge can be initiated u/s 193 IPC.

28. Therefore, the whole web of the prosecution intrinsically revolves around Section 193 IPC and Sections 195 and 340 Cr.P.C. and, therefore, this Court is ordained with the task of circumambulating the three provisions and holistically consider the intention of the Parliament in enacting the said section. http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 The intent of the Parliament rests on the language used in Section 193 IPC which is to the effect that any person, "who 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"; whereas the language used in Section 195 Cr.P.C. is that "when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court". While, the word "judicial proceeding" has been used in Section 193 IPC, however, in Section 195 Cr.P.C., the words used are "any proceeding in any Court". Further, the heading of Section 195 Cr.P.C. clearly dovetails that prosecution is to be initiated for offences against public justice and for offences relating to documents given in evidence". From the heading itself, it is unambiguously clear that Section 195 Cr.P.C. pertains to offence relating to documents given in evidence, meaning thereby that Section 195 (1) (b) (i) Cr.P.C. Stands attracted for the offences enumerated in the said provision being committed in respect of a document used as evidence in a proceeding in any court, i.e., during the time when the document was in custodia legis. In the case on hand, the documents are alleged to be fabricated before trial and during the investigative phase. In the case on hand, no fabrication of documents was made at the time of trial, which is undisputed. http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007

29. The procedure for taking cognizance by the Court finds place in Section 340 Cr.P.C., wherein the Court, after preliminary inquiry, if it thinks necessary, may proceed with filing a complaint. In the case on hand, no complaint has been filed by the Court, though charge has been framed against A-2 and A-3 for an offence u/s 193 IPC with regard to fabricating false evidence for the purpose of helping A-1 to wriggle out of the prosecution. In such a case, documents fabricated being before trial, and the Court having taken cognizance of the offence and has proceeded with the trial without raising any complaint as contemplated u/s 340 Cr.P.C., this Court is entrusted with the task of analysing whether in the absence of a complaint by the Court, the charge against A-2 and A-3 could be sustained.

30. Section 195 (1) (b) (ii) Cr.P.C. is analogous to Section 195 (1) (b) (i) Cr.P.C. Under Section 195 (1) (b) (ii) the offences for which cognizance can be taken is detailed, which revolves around forgery; u/s 195 (1) (b) (i) the offences under the penal code for which cognizance can be taken revolves around false evidence and fabrication of document. Similarly, forgery is analogous to fabrication of document and there cannot be any second opinion about it. http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007

31. The Supreme Court, in Sachida Nand Singh & Anr. - Vs – State of Bihar & Anr. (1998 (2) SCC 493), had occasion to consider the scope and interpretation of Section 195 (1) (b) (ii), which is analogous to Section 195 (1) (b) (i), and held as under :-

> "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, 476 of the 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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> 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-

 _____ Crl. A. Nos. 1089, 1090 & 1091/2007 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. Quoting from Gill v. Donald Humberstone & Co. Ltd. [(1963) 1 WLR 929 : (1963) 3 All ER 1803] Maxwell has stated in his treatise (Interpretation of Statutes, 12th Edn., p. 105) that "if the language is capable of more than one interpretation we ought to discard the more natural meaning if it leads to unreasonable result and adopt that interpretation which leads to a reasonably practicable result". The clause which we are now considering contains enough indication to show that the more _____ Crl. A. Nos. 1089, 1090 & 1091/2007 natural meaning is that which leans in favour of a strict

construction, and hence the aforesaid observation is eminently applicable here.

9. As Section 340(1) of the Code has an interlink with Section 195(1)(b) it is necessary to refer to that sub-section in the present context. The said sub-section reads as follows: "340. 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 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."

10. The sub-section puts the condition that before the Court makes a complaint of "any offence referred to in clause (b) of Section 195(1)" the Court has to follow the procedure laid down in Section 340. In other words, no complaint can be made by a http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 court regarding any offence falling within the ambit of Section 195(1)(b) of the Code without first adopting those procedural requirements. 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.

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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." http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007

32. The above view in Sachida Nand Singh's case (supra) received affirmation from the decision of the Constitution Bench in Iqbal Singh Marwah & Anr. - Vs – Meenakshi Marwah & Anr. (2005 (4) SCC 370), wherein the Supreme Court had considered the bar provided under the analogous provision, i.e., Section 195 (1) (b) (ii) Cr.P.C. and in that context, held as under :-

> "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),
>
> (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 http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 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. Section 195(1) mandates a complaint in writing to the court for taking cognizance of the offences enumerated in clauses (b)(i) and (b)(ii) thereof. Sections 340 and 341 CrPC which occur in Chapter

XXVI give the procedure for filing of the complaint and other matters connected therewith. The heading of this Chapter is — "Provisions as to Offences Affecting the Administration of Justice". Though, as a general rule, the language employed in a heading cannot be used to give a different effect to clear words of the section where there cannot be any doubt as to their ordinary meaning, but they are not to be treated as if they were marginal notes or were introduced http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the sections which immediately follow them, as a preamble to a statute may be looked to explain its enactments, but as affording a better key to the constructions of the sections which follow them than might be afforded by a mere preamble. (See Craies on Statute Law, 7th Edn., pp. 207, 209.) 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.

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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 http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 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 http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 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).

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 : 1998 SCC (Cri) 660] 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 http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 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.

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. In Statutory Interpretation by Francis Bennion (3rd Edn.), para 313, the principle has been stated in the following manner:

“The court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes, however, there are overriding reasons for applying such a construction, for example, where it appears that Parliament really intended it or the literal meaning is too strong.”

33. From the above proposition postulated in Sachida Nand Singh's case (supra) as affirmed by the Constitution Bench in Iqbal Singh's case (supra), two http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 scenarios emerge, one is the

committing of the act of fabrication of document/forgery during proceeding in court and the second scenario is committing the act of fabrication of document/forgery during the stage of investigation/prosecution, of which the latter situation is the issue in the present case. The Supreme Court went on to hold that of the two interpretations, the narrower interpretation has to be chosen. The Supreme Court has further held that it is difficult to interpret Section 195 (1) (b) (ii), which is analogous to Section 195 (1) (b) (i), 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. The Supreme Court held that such construction is likely to ensue unsavoury consequences and it was held that it is 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. In this regard, the Supreme Court relied on the decision in Gill – Vs – Donald Humberstone & Co. Ltd. (1963 (1) WLR 929 :: 1963 (3) All ER 1803).

34. It has been further held by the Supreme Court in the above said decision that Section 340 (1) Cr.P.C. has an interlink with Section 195 (1) (b). In http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 that, no complaint can be made by a court regarding any offence falling within the ambit of Section 195 (1) (b) Cr.P.C., without first adopting the procedural requirement of Section 340 (1) Cr.P.C. The scope of preliminary enquiry envisaged in Section 340 (1) Cr.P.C. 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. So the offences envisaged in Section 195 (1) (b) must involve acts which would have affected the administration of justice and that it should have been committed during the time when the document was in custodia legis. The Supreme Court, in this regard, held that it would be strained thinking that any offence as prescribed u/s 195 (1)

(b), 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. Accordingly, the Supreme Court held that the bar contained in Section 195 (1) (b)

(ii) Cr.P.C., which is analogous to Section 195 (1) (b) (i) Cr.P.C., is not applicable to a case where the the forgery or fabrication of the document was committed before the document was produced in a court.

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35. Therefore, from the above categorical pronouncement of the Apex Court, it transpires that the procedure for filing a complaint by court provided in Chapter XXVI Cr.P.C., 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. That apart, as

enunciated by the Apex Court in Iqbal Singh's case (supra), an enlarged interpretation is necessary and also would operate where after commission of an act falling u/s 195 (1) (b) (ii), the document is subsequently produced in court, is capable of great misuse.

36. Further, the Supreme Court went on to hold that the language used in Section 340 Cr.P.C., shows that 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", which clearly shows that such a course will be adopted only if the interest of justice requires and not in every case. So long as the interest of http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 justice does not require, no complaint is required to be made at the behest of the Court and non-filing of a complaint by the Court with regard to fabrication of documents/forgery would not attract the bar as envisaged u/s 195 (1) (b) Cr.P.C.

37. Having held that there is no bar attracted u/s 195 (1) (b) Cr.P.C. for proceeding in the absence of a complaint u/s 340 (1) Cr.P.C., the next question that falls for consideration is the terminology used in Section 193 IPC. It is the contention of the learned senior counsel for A-2 and A-3 that the false evidence/fabrication of false evidence should be during any stage of a judicial proceeding, but in the case on hand, the alleged fabrication of document being during investigative stage, the invocation of charge u/s 193 IPC cannot be sustained.

38. Though such a contention, at first blush, looks attractive and even on an impulsive condition, this Court may tend to side along with the appellants, however, a careful reading of Section 193 IPC reveals that the said contention deserves to be rejected. Explanation 2 appended to Section 193 IPC states that "an investigation directed by law preliminary to a proceeding before a Court of http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice".

39. Further, it is to be pointed out that the present case is an off-shoot of the search warrant issued by the Tis Hazari Court, New Delhi, based on which search was conducted at the residence of A-1. Therefore, the arms of the judicial process had already been stretched by the issuance of the search warrant, which led to the investigation team raiding the residence of A-1 leading to the recovery of the items of articles and currency, which led to the registration of a disproportionate assets case against A-1. With a view to help A-1 to wriggle out of the offence/crime, the documents, viz., Exs.P-92 and P-93 are alleged to be fabricated by A-1 to A-4. Therefore, the investigation having been carried out initially on the basis of the search warrant and, thereafter, on the basis of the legal sanction obtained from the competent authority, it is to be construed as an investigation directed by law preliminary to a proceeding before a Court of Justice and for all purposes, the said stage is also a stage of judicial proceeding.

40. Further, even without adverting to the explanation, a bare reading of the provision reveals two limbs attached through the word "or". The first limb is http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 that "whoever intentionally gives

false evidence in any stage of a judicial proceeding" and the second limb is "fabricates false evidence for the purpose of being used in any stage of a judicial proceeding". Though the first limb of the Section does not stand attracted to the case on hand, however, the second limb of the Section in toto applies to the case on hand. The fabrication of false evidence was for the purpose of usage of the same in any stage of the judicial proceeding, be it investigation or during trial. In the second limb of the Section, the crucial wordings are "purpose of usage of the same in any stage of the judicial proceeding". The above clearly implies that any document, fabricated, for the purpose of it being used in any stage of a judicial proceeding, is squarely covered u/s 193 IPC and it cannot be construed that it is only in the course of judicial proceeding that the said document should be fabricated. In the case on hand, fabrication of a document is for the purpose of being used in a judicial proceeding, at any stage, and not otherwise. This categorically puts the ball back in the court of the appellants to prove that the evidence/document was not fabricated and, therefore, the invocation of Section 193 IPC would not stand attracted. The alleged agreements, according to the prosecution, having been prepared/fabricated by A-2 and A-3, for the purpose of using the same to aid A-1 in getting relieved of the prosecution, clearly shows that it is intended for being http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 used in the stage of a judicial proceedings, if any. In the above scenario, for all purposes, the charge framed against A-2 and A-3 u/s 193 IPC cannot be said to be devoid of legal sanctity for this Court to eschew the same and, accordingly, absolve A-2 and A-3 from prosecution.

41. This Court having held that there is no bar for the respondent to charge A-2 and A-3 for the offence u/s 193 IPC, as the bar u/s 195 (1) (b) (i) Cr.P.C. does not stand attracted, this Court is now left with the task of deciding the following factual issues that arise for consideration in this case :-

> i) Whether the money seized from the residence of A-1 is disproportionate to the known sources of income of A-1;
>
> ii) Whether the sale agreements alleged to have been entered into between A-2 and A-3 are fabricated or are they legitimate;

iii) If the sale agreements alleged to have been entered into between A-2 and A-3 are held to be fabricated documents, was it fabricated for the purpose of helping A-1 to wriggle out from the clutches of the prosecution; and http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007

iv) Whether A-2 has the capacity to pay a sum of Rs.1,56,00,000/- towards sale consideration to A-3 towards purchase of two properties belonging to A-3.

42. Since all the four issues framed by the Court above are so intrinsically intertwined, they are therefore discussed compositely as below.

43. It is the contention on behalf of A-1 that the money does not belong to him and that the said fact was informed to the P.W.49 even at the first instance on the date of raid. It is the further contention on behalf of A-1 that though money is alleged to have been seized to the tune of Rs.79,65,900/- for

which search list, Ex.P-5 and Annexures 'B' 'A' and 'C', Exs.P-6 and P-7 were prepared, however, there is no attestation by the witnesses in the crucial Annexure 'A', which pertains to seizure of currency, but Annexures 'B' and 'C' have been attested by A-1, the witnesses as also P.W.49. This clearly shows that the inventory list with regard to the currency seized was prepared at a later point of time and attached as Annexure 'A' to suit the evil designs of the prosecution. Therefore, Annexure 'A' having not been prepared in a manner known to law, placing reliance on the same is not sustainable. It is the further stand of A-1 that _____ Crl. A. Nos. 1089, 1090 & 1091/2007 discrepancies galore in the quantification of the currency and the amounts arrived at based on the same and, therefore, it casts a serious doubt on the version projected by the prosecution. Once the seizure of currency fails, the other articles, seized from the residence of A-1 cannot be said to be disproportionate to the known source of income of A-1.

44. True it is that Ex.P-7, which contains Annexures 'A' and 'C' reveals that while Annexure 'C' is countersigned by the witnesses, A-1 as also the investigating officer, however, there is no sign in Annexure 'A'. A perusal of Ex.P-7, which contains Annexures 'A' and 'C' shows that both Annexures 'A' and 'C' are continuing documents and are typewritten ones. The figures at page 2 of Annexure 'A', on which reliance is placed on, reveals that there is a calculation error, but mere calculation error cannot be put against the investigating agency to throw out the entire case of the prosecution relating to A-1, as any person is prone to commit calculation error. However, non-attestation of the said calculation sheet is being highlighted to doubt the veracity of the seizure.

45. Is the seizure really genuine and non-attestation in Annexure 'A' is mere incidental and does not in any way affect the veracity of the prosecution _____ Crl. A. Nos. 1089, 1090 & 1091/2007 case or is it a calculated assault on A-1 that it affects the substratum of the prosecution case is the pivotal issue to be considered. To address this issue, the evidence of P.W.2, who is a witness to the seizure assumes significance. P.W.2 is an independent witness, who was present during the entire period of raid at the residence of A-1 and was a witness to the seizure. P.W.2, in chief examination, has categorically spoken about the inventory prepared in respect of Ex.P-6, pertaining to gold jewels, seized from the residence of A-1. In regard to the said inventory, P.W.2, has categorically deposed that Ex.P-6, which covers Annexure 'B' contained four sheets and he has further deposed that he has signed in all pages in Annexure 'B'. P.W.2 has also deposed about the currency notes recovered from the residence of A-1 and the inventory prepared thereon, which is marked as Ex.P-7. P.W.2, in chief examination, with regard to Ex.P-7, has categorically deposed that Ex.P-7 contains three sheets of paper. The above answer was elicited from P.W.2 in chief examination. P.W.2 has also categorically deposed that he signed in all the pages of Ex.P-6, which stands established on a perusal of Ex.P-6. However, P.W.2 has deposed that with regard to the recovery of currency notes and other articles, which is covered by Ex.P-7, Annexures 'A' and 'C', he has deposed that he has put his signature. P.W.2 has not stated that he put signature in all the pages of Ex.P-7. A perusal of Ex.P-7 also reveals that it _____ Crl. A. Nos. 1089, 1090 & 1091/2007 is a three page running document and that P.W.2 has signed in the last page of the document. Non-obtaining of signature in Annexure 'A' of Ex.P-7, though is a material investigative lapse on the part of the investigating officer, however, in the absence of any cross-examination of P.W.2 with regard to Ex.P-7 not only containing three sheets of paper, but also with regard to the signature

affixed by P.W.2 on Ex.P-7, mere non-attestation of the sheets in which the inventory of currency has been listed cannot be put against the prosecution and the act of A-1 is nothing but trying to clutch the last straw in the jigsaw which only reveals the desperation of A-1 to wriggle out from under the offence committed by him. The incriminating nature of the evidence of P.W.2 having not been put to cross- examination, it definitely bolsters the prosecution case regarding the seizure made from the residence of A-1.

46. It is contended on behalf of A-1 that even during the raid A-1 has informed P.W.49, the investigating officer about the money not belonging to him and, therefore, A-1 not having concealed anything from the respondent even at the earliest point of time, the respondent have not investigated the case properly, but have merely fastened the seizure on A-1. True it is that even the deposition of P.W.s 49 and 52, the investigating officers of the two different _____ Crl. A. Nos. 1089, 1090 & 1091/2007 cases, have spoken about the fact that A-1 informed them that the money seized does not belong to him, however, curiously, A-1 has not given any further details as to whom the money belonged. It was incumbent on the part of A-1 to have divulged the details to the investigating officers as to whom the money belonged which would have enabled the investigating officers to investigate the case on those lines. But for reasons best known, A-1 refrained from informing anything to the investigating officers as to whom the money belonged. Mere stating that the money seized does not belong to him without saying anything as to how the money found its place at the residence of A-1 would not absolve A-1 from the culpability of the offence under the PC Act.

47. Further, one other crucial aspect which has to be borne in mind is the fact that A-1 had written a letter, Ex.P-141, to A-2 on 6.6.01, which is almost five months from the date of raid conducted at the residence of A-1. It is the contention on behalf of A-1 that since A-1 was arrested and taken to New Delhi immediately after the raid and was held up in custody, he was able to communicate with A-2 only after he was left from the shackles of investigation. However, the said stand of A-1 runs counter to the letter, Ex.P-141, written by him to A-2. Even the very first paragraph of Ex.P-141 reveals that this is not the _____ Crl. A. Nos. 1089, 1090 & 1091/2007 first communication between A-1 and A-2. The letter reveals that even on 25.5.01, A-2 had written a letter to A-1 and, in fact, there was a personal meeting between A-2 and A-1 during the first week of May, 2001 and even prior to that there were telephonic conversations between them. Therefore, the present letter is not the first communication between A-1 and A-2. Inspite of the meeting between A-1 and A-2 during the first week of May, 2001, wherein facts pertaining to the case have been brought to the notice of A-2 by A-1, curiously, the letter, Ex.P-141, dated 6.6.01, has been written by A-1 to A-2 once against explaining the facts and the circumstances under which he was keeping the cash. Though the act of A-1 in writing the letter once over to A-2 after explaining the facts in person to A-2 and also the telephonic conversation between them, seen separately does not seem doubtful, however, a holistic consideration of the entire prosecution matrix, does not lead this Court to the conclusion that the the money seized from the house of A-1 belonged to A-2, which was held by A-1 in escrow for the purpose of giving the same to A-3. Further, this material fact has not been divulged to the investigating agency by A-1 at any point of time, though it is the stand of A-1 that he was holding the money in escrow. This Court is not at a loss to understand the reason for A-1 writing the letter, Ex.P-141 to A-2, but refrains from attributing any further incriminations, as this

Court is not to add any http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 surmises and conjectures, which passes the mind of this Court, as the act of A-1 itself speaks volumes, thereby, restricting the role of this Court to attribute reasons and arrive at conclusions.

48. Though the contention on behalf of A-1 about his service records and his accounting of properties in the service register, having spoken to by P.W.9, according to A-1, speaks about his truthfulness, yet the facts, as discussed above, belies the truthfulness of A-1 and leaves much for this Court to be spoken than to remain calm. However, this Court judiciously refrains from amplifying on this aspect any further except to state that the seizure effected from the house of A-1 coupled with the act of A-1 in not divulging the fact about the ownership of the money and the further fact that the agreements, Exs.P-92 and P-93 having not been available either in the person of A-1 or seized from the house of A-1 during the search, which started from 0900 hours on the morning of 24.01.01 to 1850 hours on 24.01.01, only further strengthen the prosecution case that A-1 was not able to provide any details about the ownership of the money seized from his house and in the absence of the same, the burden of proving the ownership of the money as one not being illegal or tainted money, shifts from the shoulder of the prosecution to the shoulder of A-1, which A-1 has miserably failed to establish http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 and, therefore, the trial court was fully justified in convicting A-1 of the charges framed against him, which this Court does not find any reason to interfere.

49. This Court has already held that the bar u/s 195 (1) (b) does not stand attracted as against A-2 and A-3. Therefore, this Court is left to deal with the conviction awarded to A-2 and A-3 for the offence u/s 193 and 120 (B) IPC.

50. Much stress was laid on the capacity of A-2 to enter into an agreement with A-3 for the purchase of the two properties for an amount of Rs.1,56,00,000/=. P.W.s 27, 28 and 30, who are officials of Customs, Commercial Tax and Ministry of Corporate Affairs were examined. They have spoken about the seizure effected from the office of the concerns in which A-2 was the Managing Director and regarding the seizure of the books of accounts, which are marked as Exs.P-85, P-86, P-87, P-88, P-89 and P-90. All those pertains to the ledger books and account books of the company belonging to A-2. From the above, it is sought to be established that A-2 was in the business of chemicals, more especially sulphur, and that he was a man of means and that he had sufficient means to purchase the properties from A-3, as is evident from the account books and ledger books of the company. In fact, the auditor report has http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 been filed as Ex.P-140, though the auditor has not been examined. In fact, one of the entries in the account book speak about the payment of Rs.80 Lakhs for the purchase of the properties. P.W.52, in his evidence in chief, has spoken about the payment of Rs.80 Lakhs to A-3 on 20.1.01, which payment entry is reflected in the account book, as evident from Ex.P-139. The books of accounts of the company of A-2 reveals that A-2 had the capacity to raise the amount for the purchase of the properties from A-3.

51. However, the question that falls for consideration is whether the amount of Rs.80 Lakhs, as shown in the account books of the company of A-2 was really the money that was seized from the

residence of A-1. As already pointed out above, the account books of the company of A-2 reveal that an amount of Rs.80 Lakhs have been paid to A-3 on 20.1.01. If really the cash is alleged to have been earmarked for payment to A-3 through A-1, which was seized from the residence of A-1, A-1 had no impediment to have communicated the same to the investigating officers. However, as noted above, curiously, neither has A-1 informed about the said money to the investigating officers, nor did A-2 inform the same to the investigating agency till the date of his addressing the letter, Ex.P-138 on 4.2.02, though he had conversations with A-1. Though A-2 had met _____ Crl. A. Nos. 1089, 1090 & 1091/2007 A-1 during the first week of May, 2001, as is evident from the letter of A-1, Ex.P- 141 dated 6.6.01 and even had telephone conversation with A-1 prior to the said date, however, for reasons best known to A-2, he has not addressed any letter to the respondent claiming the money to be his till 4.2.02, the date on which Ex.P- 138 was written to the Superintendent of Police, CBI.

52. Further, a perusal of the said letter, Ex.P-138, written by A-2 and A-3 to the respondent, it is stated that in pursuance to the agreements of sale entered into between A-2 and A-3 for the purchase of the properties of A-3, the agreements of sale was left with A-1 for the signature of A-3 as A-2 was not available on 24.1.01, the date on which raid was conducted at the residence of A-

1. At the risk of repetition, it is to be pointed out that though it is claimed that the agreements were left with A-1 for the signature of A-3 and, thereafter for A-1 to hand over the money to A-3, curiously, on the date of raid, neither any agreements were seized from the residence of A-1 nor A-1 had handed over any agreements to the investigating officer, alleged to be in his custody for the signature of A-3. It is evident from the deposition of P.W.52 in chief that copies of the agreements of sale, Exs.P-92 and P-93, between A-2 and A-3 were produced by A-2. However, the letter of A-2 to the respondent reveals that the _____ Crl. A. Nos. 1089, 1090 & 1091/2007 agreements of sale was in duplicate. In this scenario, this Court is at a loss to understand as to how the agreements, which were alleged to be in the custody of A-1 for the signature of A-3 found its way to the hands of A-2. Though it can be claimed that the sale agreements were in duplicate, as is evident from the letter, and a copy of the same was with A-2, however, it is to be remembered that A-3 requires to sign in both the copies of the documents so as to enable A-2 and A-3 to have a copy. However, the agreements, which were alleged to have been in the custody of A-1 had found its way to the hands of A-2, though A-1 was in custody of the respondent and had no opportunity to hand over the agreements to A-2. Further, the agreements, even according to A-2, were prepared in duplicate and if that be the case, the other copy was not made available to the investigating agency by A-2. Therefore, if really the case projected by A-1 that he was holding the money of A-2 in escrow to be handed over to A-3 on A-3 signing the agreements, either the agreements should have been seized from A-1 on the day of the raid, or on the arrest of A-1, A-2 should have immediately addressed the CBI with regard to the amount, which was held by A-1 in escrow along with the agreements on behalf of A-2. Neither of the above had taken place and, therefore, the defence projected for A-1 having the money in escrow stands squarely nullified.

 _____ Crl. A. Nos. 1089, 1090 & 1091/2007

53. Further, from the above sequence of events, the only inference that could be drawn by this Court is that on the amount being seized from the residence of A-1, A-1 had sought the help of A-2 during their personal and telephonic conversations leading to the hatching of a conspiracy by A-1 to A-3 on the basis of which A-1 had written a letter to A-2 on 6.6.01 highlighting the seizure and requesting him that the money entrusted to him would be returned to A-2 on being released by the respondent, whereinafter, A-2 and A-3 had written the letter, Ex.P-138, to the respondent detailing the transaction that was to have taken place between A-2 and A-3 through A-1, but for the raid by the respondent and requesting the respondent to return back the amount.

54. Till the above letter of A-2 and A-3 dated 4.2.02 and obtaining a copy of the agreements, Exs.P-92 and P-93, it is to be noted that A-2 and A-3 were not in the helm of the investigation by the respondent. However, on receipt of the agreements, the investigation revealed the culpability of A-2, A-3 and A-4 in the offence, whereinafter, the investigation took a tangent towards A-2 to A-4. A-4, a licenced stamp vendor, whose licence was cancelled way back on 7.10.92, had aided A-2 and A-3 in preparing the agreements by providing the stamp papers   The illegality of the stamp papers have been proved by the prosecution through the evidence of P.W.29, who has spoken about the fact that subsequent to the cancellation of licence of A-4 on 7.10.92, A-4 has not been issued with any stamp papers by the Treasury during the period 1998-99, 2000 and 2001. However, the stamp papers have been allegedly obtained from the said A-4 during the period of time when he was no longer a stamp vendor. Regarding the stamp papers, P.W.s 29 and 32 were examined and they have spoken about the cancellation of licence of A-4 and the further fact that no stamp papers were sold to A-4 during the period 1998-99, 2000 and 2001. Inspite of cross examination, nothing worthwhile has been elicited from the said witnesses to the benefit of the appellants. The fact that the stamp papers could not have been sold by A-4, as he was not possessed of any licence, but had borne the name of A-4 as the stamp vendor during the time when his licence was under cancellation, clearly goes to prove the conspiracy hatched between A-1 to A-4, post the raid, for the purpose of extricating A-1 from the prosecution and also at the same time trying to get the money seized from A-1 by the respondent, which was accumulated by A-1 through means not in accordance with law. Therefore, there is no doubt in the mind of this Court that the post-raid conspiracy hatched by A-1 to A-4 led to the fabricating of the alleged agreements with the use of   stamp papers provided by A-4, when A-4 was no longer licenced to sell stamp papers. However, A-4, having died pending trial, as stated above, the charge against him stood abated.

55. From the discussion made above, it is categorically clear that the sale agreements, alleged to be entered into between A-2 and A-3 is a transaction, which is purely intended for the purpose of enabling A-1 to come out from the prosecution and at the same time retrieve the money that has been seized by the respondent from the residence of A-1. The agreements, not being valid documents as they have not been executed on stamps legally obtained and further the stamp papers having no legal sanctity, it is manifestly clear that the agreements have been prepared much later in point of time from the time of raid and have been prepared for the purpose mentioned above. The said view/finding of this Court gets further strengthened by the fact that had the agreements been in existence on the date of raid, even assuming but not admitting that they have been executed on

invalid stamp papers, either A-1 would have produced the agreements to the investigating officers during raid or the investigating officers would have recovered the same during raid, none of which happened. This leads the Court to the irrefutable conclusion that the http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 agreements were prepared for the one and only purpose noted by this court above and, there being meeting of minds in hatching the conspiracy, the charge u/s 120 (B) IPC definitely stands attracted.

56. Further, it is to be pointed out the objection as to the bar u/s 195 (1)

(b) Cr.P.C. has been raised before this Court for the very first time and that the said objection has not been taken either during the court below taking cognizance of the case or at the time of trial. The point having not been canvassed before the trial court and A-2 and A-3 having subjected themselves to the prosecution u/s 193 IPC, cannot now come before this Court and raise a technical objection that their prosecution u/s 193 IPC is not sustainable in view of the bar u/s 195 (1) (b) Cr.P.C. However, there being no bar u/s 195 (1) (b) Cr.P.C., as has been held by this Court above, the conviction of A-2 and A-3 for the offence u/s 193 IPC also stands established and, this Court is in agreement with the conviction recorded by the trial court against A-2 and A-3, but for the reasons stated above.

57. Though a contention was raised on behalf of A-3 that P.W.s 31, 34, 35, 36 and 37, being the owners of the flats, have orally authorised A-3 to sell the http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 said flats and hand over the sale proceeds to them, as the flats were given to them by A-3 in lieu of the money borrowed by A-3 from them and, therefore, the transaction between A-2 and A-3 cannot be said to be a transaction in furtherance of a criminal conspiracy hatched between A-1 to A-3, however, the said contention need not be gone into for the simple reason that the agreement itself has been held to be prepared in furtherance of a conspiracy between A-1 to A-3 and, therefore, there was no necessity for the prosecution to have examined the above witnesses, as their evidence in no way furthers the prosecution case and at the same time, in no way aids the appellants case. However, this Court is not inclined to dwell deep into the deposition of the said witnesses.

58. Likewise, once the conspiracy stands proved, the non-examination of the valuer or no steps having been taken to value the properties forming part of the sale agreements pales into insignificance. Similarly, the non-examination of the auditor also does not in any way lend a hand to the appellants in establishing their defence and is in no way a detriment to the prosecution case. Therefore, this Court is not concerned with the omissions in the investigation as the lacunae in the investigation will in no way enure to the benefit of the appellants, as the defence projected by them has got shattered by their own materials, which have http://www.judis.nic.in _____ Crl. A. Nos. 1089, 1090 & 1091/2007 been adverted to above. Therefore, this Court is of the considered view that the conviction of the appellants, as recorded by the trial court, deserves to be confirmed.

59. Learned counsel appearing for the appellants submitted that in the event of this Court finding the appellants guilty of the charges, this Court, considering the age of the appellants, who are senior

citizens and by now aged about 70 years old, may consider minimum sentence taking into consideration the age of the appellants and also the passage of time from the date of registration of the case, i.e., 2002.

60. This Court, after taking into consideration the submissions of the learned senior counsel appearing for the appellants and also considering the age of the appellants and also the fact that cognizance of the case was taken in the year 2002 and that almost two decades have passed since taking cognizance of the case, this Court is of the considered view that the statute having not prescribed any minimum sentence, hence, it would meet the ends of justice if minimum sentence is awarded to the appellants.

61. In the result, these appeals are dismissed confirming the conviction recorded by the trial court. However, insofar as sentence is concerned, this Court sentences the appellants as hereunder :-

Accused	Section	Sentence
A-1	U/s 13 (2) r/w 13	Convicted and sentenced to un

(1) (e) of PC Act imprisonment for a period of one year and to pay a fine of Rs.50,000/-, in default to undergo simple imprisonment for a period of three months.

U/s 120 (B) IPC Convicted and sentenced to undergo simple imprisonment for a period of one month and to pay a fine of Rs.50,000/-, in default to undergo simple imprisonment for a period of one month.

U/s 193 IPC Convicted and sentenced to undergo simple imprisonment for a period of one month and to pay a fine of Rs.50,000/-, in default to undergo imprisonment for a period of one month.

A-2 U/s 120 (B) IPC Convicted and sentenced to undergo simple imprisonment for a period of one month and to pay a fine of Rs.50,000/-, in default to undergo simple imprisonment for a period of one month.

U/s 193 IPC Convicted and sentenced to undergo simple imprisonment for a period of one month and to pay a fine of Rs.50,000/-, in default to undergo imprisonment for a period of one month.

A-3 U/s 120 (B) IPC Convicted and sentenced to undergo simple imprisonment for a period of one month and to pay a fine of Rs.50,000/-, in default to undergo simple imprisonment for a period of one month.

U/s 193 IPC Convicted and sentenced to undergo simple imprisonment for a period of one month and to pay a fine of Rs.50,000/-, in default to undergo imprisonment for a period of one month.

The sentences are directed to run concurrently. The trial court is directed to take steps to secure the presence of the appellants and commit them to prison to serve the sentence imposed upon them.

Index : Yes
Internet : Yes
GLN

To
1. The Addl. Special Judge
CBI Cases
Chennai.

2. The Special Public Prosecutor
CBI Cases, High Court
Madras.

Crl. A. Nos. 1089, 1090 & 1091/2007

M.DHANDAPANI, J.

GLN

PRE-DELIVERY JUDGMENT IN
CRL. A. NOS. 1089, 1090
& 1091 OF 2007

Pronounced on
06.01.2020