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ASHOK GULABRAO BONDRE

V.

VILAS MADHUKARRAO DESHMUKH AND OTHERS

(Criminal Appeal No. 1931 of 2011)

APRIL 12, 2023

[B. R. GAVAI AND SANJAY KAROL, JJ.]

Code of Criminal Procedure, 1973 – s.195 – Documents allegedly fabricated and forged prior to filing in evidence, embargo u/s.195 if applicable – On appeal, held: s.195(1)(b)(ii) would be attracted only when the offence enumerated in the said provision was committed in respect of a document after it has been produced or filed in evidence during proceedings before any Court, i.e. during the time when the document is custodia legis – In such a case, the Court will be entitled to take cognizance of the offence only on the basis of the complaint made by the complainant – Impugned judgment and order passed by the Revisional Court and the High Court set aside – Matter remitted back to JMFC for considering the complaint of the appellant on its own merits.

E *Iqbal Singh Marwa and Another v. Meenakshi Marwah and Another* (2005) 4 SCC 370 : [2005] 2 SCR 708 – followed.

Surjit Singh and Others v. Balbir Singh (1996) 3 SCC 533 : [1996] 3 SCR 70; *Sachida Nand Singh and Another v. State of Bihar and Another* (1998) 2 SCC

E 493 : [1998] 1 SCR 492 – referred to.

Case Law Reference

[2005] 2 SCR 708	followed	Para 11
[1996] 3 SCR 70	referred to	Para 16
G [1998] 1 SCB 492	referred to	Para 17

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1931 of 2011

H From the Judgment and Order dated 18.02.2010 of the High Court of Judicature at Bombay Bench at Nagpur in CRLA No. 3121 of 2009.

Ms. Anagha S. Desai, Sachin Patil, Satyajit A Desai, Siddharth Gautam, Gajanan N Tirthkar, Abhinav K. Mutyalwar, Yougant Dhillon, Advs. for the Appellant. A

Rahul Chitnis, Ms. Shwetal Shepal, Aditya Kumar, Chander Shekhar Ashri, Aaditya Aniruddha Pande, Siddharth Dharmadhikari, Bharat Bagla, Sourav Singh, Advs. for the Respondents. B

The Judgment of the Court was delivered by

B. R. GAVAI, J.

1. The appeal arises on a very narrow canvass.
2. The appellant had filed a complaint against the respondents alleging that the respondents had committed the offence punishable under Sections 191, 192, 196, 463, 464, 465, 467, 470 and 471 read with Section 34 of the Indian Penal Code, 1860 (for short, "IPC"). C

3. The main allegation made by the appellant is that respondent No.2 - Ramprasad Pancheshwar had prepared false and forged documents, namely, personal recognizance bond and surety bond in Criminal Case No. 19 of 2003 and the rest of the respondents conspired and actively helped respondent No.2 for forging the said documents. D

4. It is the case of the appellant that those documents had been eventually filed on record in Criminal Case No. 19 of 2003 pending against the appellant before the Judicial Magistrate First Class, Ramtek (hereinafter referred to as the "JMFC"). E

5. The learned Judicial Magistrate First Class vide order dated 6th November 2004 dismissed the complaint. Being aggrieved thereby, the revision petition came to be filed. F

6. Learned Additional Sessions Judge, Nagpur vide order dated 14th March 2005 has held that such a complaint could not have been filed except in writing of the Court concerned or some other Court, that too a subordinate one. G

7. Learned Additional Sessions Judge, however, found that the allegations made by the revision petitioners were serious in nature, and therefore, directed that if any application is filed by the appellant under Section 340 of the Criminal Procedure Code, 1973 (for short, "Cr.P.C."), the learned JMFC would make a suitable preliminary enquiry and H

- A thereafter, record his finding to that effect as contemplated under Section 340 of the Cr.P.C.

8. The said order passed by the Revisional Court came to be challenged by the appellant before the High Court in an application filed under Section 482 of the Cr.P.C. The same came to be rejected. Hence, B the present appeal.

9. We have heard Mr. Sachin Patil, learned counsel appearing for the appellant and Mr. Rahul Chitnis and Mr. Aaditya Aniruddha Pande, learned counsel appearing for the respondents.

C 10. Mr. Sachin Patil submits that the alleged forgery had not been committed during the pendency of the proceedings. It is submitted that it is the contention of the appellant that the respondents had forged the documents earlier and used them in the proceedings initiated against the appellant. It is, therefore, submitted that the bar of Section 195 of the Cr.P.C. would not be applicable.

D 11. Mr. Sachin Patil has relied on the judgment of the Constitution Bench of this Court in the case of *Iqbal Singh Marwa and Another v. Meenakshi Marwah and Another*¹.

E 12. Mr. Sachin Patil further submits that though the judgment of the Constitution Bench was cited before the learned Single Judge of the High Court, it did not consider the same in correct perspective.

F 13. Mr. Rahul Chitnis, on the contrary, submits that the appellant has already accepted the order passed by the Revisional Court and filed an application under Section 340 of the Cr.P.C. before the learned Magistrate. He further submits that, on account of the interim relief granted in the present appeal, the said application could not be proceeded further. He submits that as such, the question that is involved in the present matter is purely an academic question in which the Court should not go.

G 14. Mr. Aaditya Aniruddha Pande, supports the submission made by Mr. Rahul Chitnis.

H 15. The narrow question that requires to be considered is as to whether the embargo under Section 195 of the Cr.P.C. would be applicable when the allegation that the documents which are sought to

be used as evidence were already fabricated and forged prior to filing in A evidence.

16. This Court, in the case of *Surjit Singh and Others v. Balbir Singh*², had taken a view thus:

“10. It would thus be clear that for taking cognizance of an offence, the document, the foundation of forgery, if produced before the court or given in evidence, the bar of taking cognizance under Section 195(1)(b)(ii) gets attracted and the criminal court is prohibited from taking cognizance of offence unless a complaint in writing is filed as per the procedure prescribed under Section 340 of the Code by or on behalf of the Court. The object thereby is to preserve purity of the administration of justice and to allow the parties to adduce evidence in proof of certain documents without being compelled or intimidated to proceed with the judicial process. The bar of Section 195 is to take cognizance of the offence covered thereunder.”

17. Subsequently, this Court, in the case of *Sachida Nand Singh and Another v. State of Bihar and Another*³, took the view thus:

“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.”

²(1996) 3 SCC 533

³(1998) 2 SCC 493

- A 18. Finding the two conflicting views taken with regard to the interpretation of Section 195 of the Cr.P.C., the question was referred to the Constitution Bench of this Court in the case of *Iqbal Singh Marwa* (supra). It will be relevant to refer to paragraph 7 of the said judgment, which is as under:
- B “7. On a plain reading clause (b)(ii) of sub-section (1) of Section 195 is capable of two interpretations. One possible interpretation is that when an offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 IPC is alleged to have been committed in respect of a document which is subsequently produced or given in evidence in a proceeding in any Court, a complaint by the Court would be necessary. The other possible interpretation is that when a document has been produced or given in evidence in a proceeding in any Court and thereafter an offence described as aforesaid is committed in respect thereof, a complaint by the Court would be necessary.
- C D On this interpretation if the offence as described in the Section is committed prior to production or giving in evidence of the document in Court, no complaint by Court would be necessary and a private complaint would be maintainable. The question which requires consideration is which of the two interpretations should be accepted having regard to the scheme of the Act and object sought to be achieved.”
- E 19. After observing the aforesaid and considering the entire scheme under Section 195 of the Cr.P.C., so also under Section 340 of the Cr.P.C., this Court observed thus:
- F “33. In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodia legis.
- G 34. In the present case, the will has been produced in the Court subsequently. It is nobody’s case that any offence as enumerated in Section 195(1)(b)(ii) was committed in respect to the said will after it had been produced or filed in the Court of District Judge.
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Therefore, the bar created by Section 195(1)(b)(ii) Cr.P.C. would not come into play and there is no embargo on the power of the Court to take cognizance of the offence on the basis of the complaint filed by the respondents. The view taken by the learned Additional Sessions Judge and the High Court is perfectly correct and calls for no interference.”

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20. It could thus clearly be seen that this Court, on unequal terms, has held that the view taken in the case of *Sachida Nand Singh* (supra) that Section 195(1)(b)(ii) of the Cr.P.C. would be attracted only when the offence enumerated in the said provision was committed in respect of a document after it has been produced or filed in evidence during proceedings before any Court, i.e. during the time when the document is *custodia legis*. The Court has clearly held that, insofar as the Will which is alleged to have been fabricated before it was produced in the Court, the embargo created by Section 195(1)(b)(ii) of Cr.P.C. would not come into play.

B

21. It has been held that in such a case, the Court will be entitled to take cognizance of the offence only on the basis of the complaint made by the complainant.

C

22. In that view of the matter, we find that the view taken by the Revisional Court as well as the High Court is not sustainable.

D

23. The impugned judgment and order passed by the Revisional Court as well as the High Court are quashed and set aside.

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24. The matter is remitted back forthwith to the learned JMFC, Ramtek for considering the complaint of the appellant on its own merits.

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25. Taking into consideration that the litigation is pending for almost a decade, we request the learned JMFC to decide the complaint of the appellant on merits as expeditiously as possible and in any case within a period of one year from today.

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26. We further make it clear that we may not be understood to have expressed any opinion on merits and nothing observed herein should be construed to have bearing on the merits of the matter.

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27. The appeal is disposed of in the above terms.

28. Pending application(s), if any, stand(s) disposed of.