Chandradhar Gaur vs State Of U.P. on 17 May, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:82737

A.F.R.

Judgement Reserved on 2nd May, 2025

Judgement Delivered on 17th May, 2025

Court No. - 89

Case :- CRIMINAL REVISION No. - 3355 of 2018

Revisionist :- Chandradhar Gaur

Opposite Party :- State of U.P.

Counsel for Revisionist :- Alok Ranjan Mishra,Amrita Rai Mishra,Gopal Swarup Chaturvedi

Counsel for Opposite Party :- G.A.

Hon'ble Avnish Saxena,J.

1. The present revision has been preferred under Section 397 read with Section 401 Cr.P.C. by the revisionist/accused- Chandradhar Gaur, (Investigating Officer of case crime no. 508 of 2018 registered under Section 354 IPC and Sections 7, 8 of Protection of Children from Sexual Offences Act, 2012 (POCSO), Police Station-Chhata, District Mathura), on being aggrieved by judgement of conviction and sentence dated 20th September, 2018 passed by the Court of Special Judge (POCSO Act), Mathura, in Criminal Misc. Case No. 429 of 2018 whereby invoking Section 345 Cr.P.C. convicted the revisionist/accused under Section 188 IPC and punished him by sentence of six months imprisonment as well as fine of Rs. 1000/- and 10 days simple imprisonment in default of payment of fine.

APPEAL OR REVISION :-

2. Though, Section 351 Cr.P.C. provides remedy of appeal for conviction recorded, inter alia, under Section 345 Cr.P.C., but the revision has been preferred, as the learned trial court has convicted and sentenced the revisionist/accused for an offence under Section 188 IPC, which is not provided under

Section 345 Cr.P.C., therefore, the correctness, legality and regularity of proceeding, propriety of findings recorded by the trial court has been challenged in revision instead of appeal. It has been held by the Division Bench of the Gujarat High Court in the case of Chinubhai Keshav-lal Nanavati Vs. K.J.Mehta1 that in case of unjust conviction, moving a Criminal Court in appeal or revision is the right course of action. Therefore, the revision.

3. Before venturing into the present matter, it would be expedient to consider it's genesis, which arose from case crime no. 508 of 2018, P.S. Chhata, District Mathura.

PROSECUTION CASE OF CASE CRIME NO. 508 OF 2018 :-

4. The informant- Devaki Nandan has lodged the first information report at P.S. Chhata, District Mathura on 28th August, 2018 at 11:51 hours under Section 354 IPC and Sections 7, 8 of POCSO Act for the offence committed with his elder daughter 'X' by accused Ishwar Dayal on 7th July, 2018 at 16:00 hours on Nagla Dharampur Road, P.S. Chhata, District Mathura, when the informant's elder daughter aged about 10 years went for nature's call along with her younger sister aged about 3 years, at that time the accused aged about 40 years reached there and gave Rs. 10/- to the victim and allured her to come to his residence for taking Rs. 10/-. The victim when refused to accept Rs. 10/-, the accused has caught hold of her cheeks and started doing obscene act by removing his cloths. At this juncture, the informant's mother-Smt. Sumitra, wife-Shimla, Sundar son of Ram Swarup and Mano son of Pappu, all resident of Khaira, P.S.Chhata, District Mathura came there, witnessed the incident and saved the victim. The investigation of the case has been entrusted to S.I.-Vipin Sharma, as is revealed from the above FIR (annexed as Annexure-3).

GENESIS OF CRIMINAL MISC. CASE NO. 429 OF 2018 (State Vs. Chandra Dhar Gaur) :-

5. The impugned judgement reveals that the Presiding Special Judge, POCSO Act had issued certain directions as to who shall be the investigating officer and further directions regarding investigation of the case, which purportedly has not been complied by the Investigating Officer. One of the direction issued by the Special Judge, led to the filing of report dated 19th September, 2018 by Ahalmad of the Court Sri Nagendra and Court Moharrir Sri Bharat Singh against the revisionist, that he has not complied with the directions issued by the Court. Hence, registration of Misc. Case no. 429 of 2018 under Section 345 Cr.P.C. read with Sections 228 and 188 IPC on 19th September, 2018. On the same day, after registration of the aforesaid case, a show cause notice was issued to the revisionist for 20th September, 2018 to furnish reply. It is revealed from the impugned judgement that the reply has not been filed and the conviction has been recorded in absence of the revisionist, who was sentenced accordingly.

6. As the impugned judgement is being dealt with at a later stage of discussion, hence, the same has not been considered under this head.

GROUNDS TAKEN BY THE REVISIONIST :-

7. The revisionist while assailing the judgement and order of conviction and sentence has inter alia, taken the grounds that the statement of victim got recorded under Section 164 Cr.P.C. on 20th September, 2018 by an Additional Civil Judge (J.D.), Court No.8, Mathura and no allegation has been made by her against the police personnel; the impugned judgement is illegal, contrary to law and against the provisions of Cr.P.C.; the revisionist has conducted proper investigation of the case and complied all the orders of the court concerned; the impugned judgement and order of conviction has been made in contravention to the provision of Section 352 Cr.P.C. after taking cognizance of offence under Section 345 Cr.P.C. read with Sections 228 and 188 IPC; the court concerned has got no jurisdiction to proceed with the case in view of Section 195 Cr.P.C. to punish a person in contempt of his own authority; the record of the case in which the revisionist has been convicted and sentenced does not have any material against the revisionist on the basis of which the impugned judgement has been passed; the impugned judgement and order has been passed in contravention to the principles of natural justice; the judgement of conviction and thereafter punishment has been made against the revisionist in his absence, without giving proper opportunity of hearing; the orders passed during the investigation suffers the test of legality of procedure and jurisdiction; and the court concerned has passed the impugned judgement in absence of bonafide, because vide Notification dated 17th September, 2018, the Presiding Judge has been transferred from the court concerned and before leaving the charge on 20th September, 2018, passed the impugned judgement in haste. As such, it has been prayed that the impugned judgement and order of sentence is liable to be set aside.

ARGUMENTS OF PARTIES:-

8. Sri G.S.Chaturvedi, learned Senior Counsel assisted by Sri Alok Ranjan, learned counsel for the revisionist has submitted besides the written submission that the impugned judgement and order has been passed against the principles of natural justice; against the provision of Cr.P.C., particularly Section 352 Cr.P.C.; wrongly invoking Section 345 Cr.P.C.; convicted the revisionist under Section 188 IPC, in the garb of punishing for Contempt of Court, which is the exclusive jurisdiction of High Court. It is further submitted that the learned court has acted malafidely, as the criminal misc. case has been registered on 19th September, 2018, the show cause notice has been sent to the revisionist on the same day during night for 20th September, 2018, calling for explanation of revisionist and without adducing evidence, the order of conviction has been recorded on the very next day of inception of case. It is further submitted that the revisionist has neither been given the opportunity of explanation nor his statement under Section 313 Cr.P.C. has been recorded. Moreover, the offence of Section 188 IPC in which the revisionist has been convicted is triable by Magistrate. Lastly submitted, that the exercise of jurisdiction by the court concerned is flagrant misuse of process of law, hence, prayed that the revision is liable to be allowed. He has relied upon the cases of C. Muniappan & others Vs. State of Tamilnadu2, M.S. Ahlawat Vs. State of Haryana and Another3, C. R. Rajesekaran Vs. Judicial Magisstrate Nagapattinam4 and S. Rajanikanth Vs. Tmt. C. Thirumagal, learned VII Metropolitan Magistrate, George Town, Chennai-6000015.

9. Sri Alok Sharma, learned AGA-I has submitted that the judgement of conviction and sentence has been passed by learned Court after considering all the material and evidence available on record, after application of his judicial mind. It is further submitted that Judge, POCSO Act has got a right

and duty to consider whether the investigation in the cases of POCSO Act has been rightly carried out by the Investigating Officer or not. It is further submitted that the learned Court when got to know that the first information report of the victim has not been registered by the C.O., P.S. Chhata, District Mathura and finds flaws in the investigation, directed an investigation against the Police Officer, which was found by the court not being carried out in right direction, that led the court to pass subsequent orders in the interest of justice and fair investigation. It is only then that the court has found that the specific direction of the court given to the Investigating Officer for investigation of the case has not been complied with, hence, the case has been registered against the revisionist. It is further submitted that the learned trial court made an observation that despite sending a show cause notice, the revisionist neither appeared nor replied the same, which led to passing of the impugned judgement of conviction and sentence against the revisionist. He submits that the revision is liable to be dismissed and impugned judgement of the trial court is liable to be affirmed.

POINTS OF CONSIDERATION AND DISCUSSION:-

10. This Court has taken into consideration the rival submissions made by the parties and perused the material available on record. The Court does not finds it proper to call for trial court record at this juncture because this Court while going through the arguments did not find it proper to requisition the record, as all the relevant record is before the Court, filed by the parties.

11. The point of consideration in the present revision are as follows:-

> (i) Whether the learned trial court has rightly taken up the matter against the revisionist invoking Section 345 Cr.P.C.?
>
> (ii) Whether the learned trial court has rightly taken cognizance of offence under Section 188 IPC against the revisionist, proceeded with the trial and convicted the revisionist?

12. As both the points of consideration arose in the present revision are inter-twined, hence, have been taken up together for discussion and adjudication.

13. The impugned judgement reveals following facts that need to be dealt with :-

> (a) On 7th July, 2018, the date of incident, informant has approached Kotwali Chhata, Mathura but his report was not lodged, consequently, the informant gave an application to S.S.P., Mathura on 31st July, 2018 about the incident as well as complaint against S.O., P.S. Chhata, District Mathura.
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> (b) On the direction of S.S.P., Mathura dated 23rd August, 2018 to the Head Moharrir, the first information report in case crime no. 508 of 2018 under Section 354 IPC and Sections 7, 8 of POCSO Act has been registered in the matter, but prior to the registration of the first information report, the informant entered a complaint dated 17th July, 2018 on the Complaint Portal against Sri Pramod Pawar, S.O., Police

Station-Chhata, District-Mathura for not registering of first information report of sexual offence.

(c) On 29th August, 2018 the Special Court of POCSO Act has issued direction in view of Section 21 of POCSO Act and Section 166-A of IPC (instituted by Act No. 13 of 2013 w.e.f. 3rd Feburay, 2013) directing that the investigation shall be conducted by the Stations House Officer of the concerned police station, who shall also investigate the conduct of Sri Pramod Pawar, S.O., P.S. Chhata, in dealing with the present matter.

(d) On 12th September, 2018, the Special Court, POCSO Act has issued direction to produce the informant and victim before the court for the grant of compensation in case crime no. 508 of 2018.

(e) On 13th September, 2018, the victim and informant were produced before the court, it has been observed by the Special Court that the statement of victim has not been recorded and the statement of informant recorded under Section 161 Cr.P.C. by the Investigating Officer is not the correct statement and without permission of the court, the informant and victim were taken away from the court.

(f) On 18th September, 2018 the victim was produced by the Investigating Officer before the Special Court for statement of victim under Section 164 Cr.P.C., which was directed to be recorded by the Chief Judicial Magistrate. The Special Court has also found that the case diary contained incorrect statement of the informant recorded under Section 161 Cr.P.C., which has the effect of exonerating Sri Pramod Pawar, S.O., P.S. Chhata, as the court has inquired from the informant that he has not given such statement. On the same date, the Special Court has directed the Investigating Officer to arrest the accused Ishwar Dayal and to start investigation against witnesses, namely, Sundar and Mano for offence under Section 195-A IPC for pressurizing the informant to enter into compromise in the matter.

(g) On 19th September, 2018, the Ahalmad of Special Court Sri Narendra Kumar and the Court Moharrir of the Court Sri Bharat Singh gave an application to the Special Court that the accused in case crime no. 508 of 2018 has not been arrested and the Investigating Officer-Chandra Dhar Gaur (the present revisionist), is willfully disobeying the orders of the Court. On the basis of aforesaid application, Crl. Misc. Case No. 429 of 2018 under Section 345 Cr.P.C. read with Sections 228 and 188 IPC was registered against the revisionist, resultantly, a show cause notice was issued against the revisionist to present on 20th September, 2018 and to explain the conduct. The show cause notice required the following explanation:-

(i) Why the statement of victim has not been recorded;

(ii) Why Inspector-Pramod Pawar, S.O., P.S. Chhata has been erroneously saved;

(iii) Why accused Ishwar Dayal has not been arrested, which led to undue pressure on informant and victim of case crime no. 508 of 2018.

14. The Special Court observed that the revisionist has not given explanation and therefore, convicted the revisionist under Section 188 IPC read with Section 345 Cr.P.C.

15. The judgement on it's face reveals that the revisionist is not convicted and sentenced under Section 345 Cr.P.C. read with Section 228 IPC as is provided, but the conviction is under Section 188 IPC without following the procedure as is provided under Sections 190 and 195 Cr.P.C.. According to Section 190 Cr.P.C. the Magistrate and Special Court may take congizance of offence, "(a) upon receiving a complaint of fact which constitute such offence; b) upon a police report of such fact; (c) upon an information received from any person other than the Police Officer, or upon his own knowledge, that such offence has been committed." Whereas, Section 195 Cr.P.C. deals with prosecuting certain offences, including those against public justice, contempt of lawful authority and those relating to documents given in evidence.

In the present case, the basis of initiation of proceeding is the report made by Court Ahalmad and Court Moharrir.

16. This Court without giving any opinion as to the legality of directions issued by the Special Court POCSO Act during investigation of the case, concentrate itself to the legality of process and tenability of impugned judgement.

17. Chapter XXVI of Cr.P.C. provides as to the offences effecting the administration of justice and chapter XIV of Cr.P.C. deals with the conditions requisite for initiation of such proceeding. The offence affecting the administration of justice are categorized in five categories, provided under Sections 340, 344, 345, 349 and 350 of Cr.P.C.. As section 345 Cr.P.C. has been invoked in the present case, as such, focus has been made on this provision alone. The provision of Section 345 Cr.P.C. is reiterated underneath:-

> "345. Procedure in certain cases of contempt.- (1) When any such offence as is described in section 175, section 178, section 179, section 180, or section 228 of the Indian Penal Code (45 of 1860), is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and may, at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.
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> (2)In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

> (3)If the offence is under section 228 of the Indian Penal Code (45 of 1860), the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult."

18. The plain reading of Section 345 Cr.P.C. transpires that the concerned provision is attracted when the offence of Indian Penal Code described under Section 175 (omission to produce document or electronic record to public servant by person legally bound to produce it), Section 178 (refusing oath or affirmation when duly required by public servant to make it), Section 179 (refusing to answer public servant authorised to question), Section 180 (refusing to sign statement); or Section 228 (intentional insult or interruption to public servant sitting in judicial proceeding) is committed, but the condition prerequisite in exercise of Section 345 Cr.P.C. is that the offence(s) is committed 'in the view or presence of any civil, criminal or revenue court'. In the present case the alleged offence has not been considered to have been committed in view of or in presence of the learned trial court because the substance of show cause notice only shows that the Court has initiated to proceed in disobedience of its order passed during the investigation of the case.

19. It is further required to be considered that the proceeding under Section 345 Cr.P.C. is to be carried out in the light of procedure provided under Sections 346 and 352 Cr.P.C., which are reiterated as under :-

> "346. Procedure where Court considers that case should not be dealt with under Section 345.
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> (1)If the Court in any case considers that a person accused of any of the offences referred to in Section 345 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under Section 345, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such person before such Magistrate, or if sufficient security is not given shall forward such person in custody to such Magistrate.
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> (2)The Magistrate to whom any case is forwarded under this section shall proceed to deal with, as far as may be, as if it were instituted on a police report."

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> "352. Certain Judges and Magistrates not to cry certain offences when committed before themselves.- Except as provided in sections 344, 345, 349 and 350, no Judge of a Criminal Court (other than a Judge of a High Court) or Magistrate shall try any

> person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding."

20. This Court has found that the proceeding by the learned trial court has not been carried out under Section 345 Cr.P.C., but it is the one that has been conducted purely and explicitly under Section 188 IPC. It is required to be considered, whether the learned trial court has rightly convicted the revisionist under Section 188 IPC, though, Section 346 Cr.P.C. provides that if the Court is of the opinion that the case should not be disposed of under Section 345 Cr.P.C. then the case shall be forwarded to the Magistrate having jurisdiction to try the same; and Section 352 Cr.P.C. has taken away the power of contempt from the criminal court other than the Judge of a High Court.

21. In the case of C. R. Rajesekaran Vs. Judicial Magistrate Nagapattinam (supra), the Single Judge of Madras High court in paragraphs, 6, 7 and 10 to 12 has observed about the cognizance of offence under Section 345 Cr.P.C. and Section 228 IPC taken by the Court concerned in contravention to the provisions of Cr.P.C, the relevant extracts are quoted herein below:-

> "6.Section 228 IPC reads as follows:-
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> "Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

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7.The Supreme Court had an occasion to analyze this Section in the decision made in State of Madhya Pradesh Vs. Revashankar reported in AIR 1959 SC 102 wherein Their Lordships have stated that there are three ingredients essential for attracting Section 228 IPC they being, (1) Intention, (2) Insult to interruption to a public servant and (3) The public servant insulted or interrupted must be sitting in any stage of a judicial proceeding.

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10.Yet another disturbing feature in the present case is when the Magistrate proposes to sentence the accused for imprisonment or fine of Rs.1000/- he should necessarily follow the provisions of Section 346 Cr.P.C. In other words, section 345 and 346 are the relevant procedures under which an offence under Section 228 IPC has to be proceeded with. Section 345 Cr.P.C contemplates that when an offence under Section 228 IPC is committed in the presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and before rising, give the offender a reasonable opportunity of showing the cause why he should not be punished under this section and thereafter, sentence the offender to a fine not exceeding Rs.200/- and in default to fine simple imprisonment for a term which may extend to one month and clause (2) specifies that in such case, the court should record the facts constituting the offence. Clause (3) specifically states

that the records of the Magistrate shall show the nature and stage of the judicial proceedings in which the court interrupted or insulted was sitting and the nature of the interruption or insult.

11.In my considered opinion, 345(3) Cr.P.C is totally absent in the present case. But what is more dis-heartening is that the Magistrate has not followed section 345 Cr.P.C. since it makes clear that the sentence that could be imposed under this section is only Rs.200/- fine and though section 228 IPC contemplates imprisonment for six months, the same could be done only when the procedure mentioned in section 346 IPC is followed.

12.Section 346 Cr.P.C contemplates that when the Magistrate before whom such offence has been committed feels that the punishment for such an accused, who has committed an offence under Section 228 should be in excess of Rs.200/- fine, he should necessarily after recording the facts constituting the offence and the statement of the accused, forward the case to a Magistrate having jurisdiction to try the same and it is that Magistrate who shall proceed and deal with and try the case as if it was instituted on a Police report."

22. In yet another case of S. Rajanikanth Vs. Tmt. C. Thirumagal, learned VII Metropolitan Magistrate, George Town, Chennai-600001 (supra), the Single Judge of Madras High Court has considered the irregularity of proceeding carried out under Section 345 Cr.P.C. in paragraphs 9 and 25 the relevant extracts are quoted herein below:-

> "9. In this case, the offence was allegedly committed on 28.01.2008. The petitioner was not caused to be detained and the proceedings under Section 345(1) was not initiated on the same day. On the other hand, it was sought to be initiated by issuing a show cause notice on the succeeding day, namely 29.01.2008. The same, as rightly pointed by the learned counsel for the petitioner, is outside the scope of Section 345(1) Cr.P.C. Therefore the initiation of the criminal proceedings under Section 345(1) Cr.P.C, not on the same day of commission of the offence but on the succeeding day, is a material irregularity which will vitiate the proceedings. Once the court omits to or is disabled from taking cognizance of the offence on the same day, then it loses jurisdiction to initiate the summary proceedings under Section 345(1) Cr.P.C. In such an event, the only alternative available is to set the criminal law in motion in the regular course of preferring a complaint under the private complaint procedure or lodging a complaint with the police. Therefore the very initiation of the criminal proceedings under Section 345(1) Cr.P.C is against the provision and the impugned order passed in the proceeding thus initiated cannot be sustained and the same is liable to be set aside.
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> 25. Morevoer, as pointed out supra, the respondent seems to have preferred a police complaint with improved version, apart from the proceedings initiated under Section 345(1) Cr.P.C, as a preemptive measure because a representation was made to the Registrar General of the High Court and to the Hon'ble Chief Justice, Madras High

> Court regarding the conduct of the respondent. Had the respondent taken little care to exhibit the conduct expected of a judicial officer while disposing of cases as laid down by the Supreme Court in Chetak Constructions Limited Vs. Om Prakash and Others, she would not have behaved in such a manner leading to the unfortunate consequences. In any event the impugned order of the respondent as VII Metropolitan Magistrate, George Town, Chennai cannot be sustained and the same is liable to be set aside in exercise of the inherent powers of the Court as the petitioner has proved bias, and abuse of process of Court. It has also been proved that the impugned order was passed in violation of the natural law principle of audi alteram partem, which is also incorporated in the procedure contemplated in Section 345(1) Cr.P.C. This Court is of the considered view that allowing the conviction to stay will result in miscarriage of justice and the same shall be a sufficient reason for exercising the inherent powers of the High Court under Section 482 to set aside the impugned order."

23. The above two judgements cited by the revisionist are on the point of requirement of compliance of procedure, while initiating a case under Section 345 Cr.P.C. and the requirement of detention of accused on the date of commission and the trial gets vitiated if no detention and issuance of show cause notice on a subsequent day. In the present case the invocation of Section 345 Cr.P.C. is an eye wash as no offence is committed in view or presence of the court but what could be inferred is alleged disobedience of orders of the Court. Further, Section 188 IPC is an offence simplicitor, otherwise, than provided as an offence effecting the administration of justice, but deals with contempt of lawful authority of public servant, which is required to be dealt with in accordance to the provisions of initiation of proceeding, provided under Section 195 Cr.P.C., which is a non-obstante clause. Sub-Section 1(a)(i) 'provides that no court shall take cognizance of any offence punishable under Sections 172 to 188 IPC (both inclusive) of Indian Penal Code', except on complaint in writing of the public servant or on some other public servant to whom he is administratively subordinate. The concerned provisions of Section 188 IPC and Section 195 Cr.P.C. are reiterated underneath :-

> "188. Disobedience to order duly promulgated by public servant.--
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> Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.-- It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm."

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"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 other public servant to whom he is administratively subordinate;(b)(i)of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or(ii)of any offence described in section 463, or punishable under section 471, section 475 or section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or(iii)of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint :

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3)In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court and includes a Tribunal constituted by or under a Central, Provincial or State Act, if declared by that Act to be a Court for the purposes of this section.(

4)For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinarily original civil jurisdiction within whose local jurisdiction such Civil Court is situate :

Provided that -(

a)where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;(

b)where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

24. Even if, it is considered that the learned trial court has registered a case against the revisionist for offence under Section 188 IPC on the basis of application of Special Court Ahalmad, Narendra Kumar and Court Moharrir, Bharat Singh, as a complaint, then the learned trial court has got no jurisdiction to try the case in view of Sections 345 and 346 Cr.P.C.. It is further required to point out here that the said alleged cognizance has been taken by the learned trial court on 19th September, 2018 and on 20th September, 2018 the impugned judgement of conviction has been recorded and sentence has been awarded against the revisionist. It is also a matter of grave concern that no material and evidences were adduced before the trial court in a day, which led to the basis of conviction of revisionist. It is further, a matter of grave concern that the revisionist/accused has not been given a fair chance to give his explanation or to defend his case and the trial court has reached to the conclusion, that the alleged disobedience on the part of the revisionist/accused has cause danger to human life, health or safety or causes a riot or affray and therefore punish with a graver punishment of six months and fine of Rs. 1,000/-, which has got no rational basis.

25. In the case of C. Muniappan & others Vs. State of Tamilnadu (supra), the Supreme Court has considered and held the mandatory nature of provision of Section 195 Cr.P.C. in convicting for offence under Section 188 IPC, relevant extract is quoted herein below:-

"20. Section 195(a)(i) Cr.PC bars the court from taking cognizance of any offence punishable under Section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 Cr.PC that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in the Cr.PC like sections 196 and 198 do not lay down any rule of procedure, rather, they only create a bar that unless

some requirements are complied with, the court shall not take cognizance of an offence described in those Sections. (vide Govind Mehta v. The State of Bihar, AIR 1971 SC 1708; Patel Laljibhai Somabhai v. The State of Gujarat, AIR 1971 SC 1935; Surjit Singh & Ors. v. Balbir Singh, (1996) 3 SCC 533; State of Punjab v. Raj Singh & Anr., (1998) 2 SCC 391; K. Vengadachalam v. K.C. Palanisamy & Ors., (2005) 7 SCC 352; and Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr., AIR 2005 SC 2119).

21. The test of whether there is evasion or non-compliance of Section 195 Cr.PC or not, is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. In Basir-ul-Haq & Ors. v. The State of West Bengal, AIR 1953 SC 293; and Durgacharan Naik & Ors v. State of Orissa, AIR 1966 SC 1775, this Court held that the provisions of this Section cannot be evaded by describing the offence as one being punishable under some other sections of IPC, though in truth and substance, the offence falls in a category mentioned in Section 195 Cr.PC. Thus, cognizance of such an offence cannot be taken by mis-describing it or by putting a wrong label on it.

xxxxx 25 Thus, in view of the above, the law can be summarized to the effect that there must be a complaint by the pubic servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 Cr.PC are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction."

26. Likewise, in the case of M.S. Ahlawat Vs. State of Haryana and Another (supra), the Supreme Court has also observed the mandatory nature of provision of Section 195 Cr.P.C.. The relevant paragraph 5, is quoted herein below:-

"5. Section 195 of the Criminal Procedure Code (Cr.P.C.) provides that where an act amounts to an offence of contempt of the lawful authority of public servants or to an offence against public justice such as giving false evidence under Section 193 IPC, etc. or to an offence relating to documents actually used in a court, private prosecutions are barred absolutely and only the court in relation to which the offence was committed may initiate proceedings. Provisions of Section 195 Cr.P.C. are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that Section. It is settled law that every incorrect or false statement does not make it incumbent upon the court to order prosecution, but to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice."

27. The matter in hand has it's genesis on the report of Ahalmad and Court Moharrir of the Court. The record is silent about the authority of the two officials of the court to submit report against the

Investigating Officer of a case and how such a report qualified the term 'Complaint', provided under Section 195 Cr.P.C., but this Court is of the view that the suo-moto report of the court Ahalmad and court Moharrir cannot be considered as a 'complaint'. Moreover, the record is also silent that the orders and directions issued by the Special POCSO Judge to the Investigating Officer of case crime no. 508 of 2018 is a time bound order. The judgement is also silent on the point whether any date has been fixed for compliance of the said order. Further, the proceeding reflects that no charge under Section 188 IPC has been framed against the revisionist, in absence whereof the proceedings, conviction and sentence became improper and legally not tenable and liable to be set aside.

28. Upon considering the entire gamut of facts, material available on record, the legal provisions discussed here in above, this Court is of the view that the learned trial court has proceeded with the case de-hors the procedure prescribed under the code of criminal procedure and recorded conviction in the offence for which the court does not have jurisdiction to proceed.

29. The present criminal revision is allowed. The impugned judgement and sentence dated 20th September, 2018 is hereby set aside.

30. No order as to costs.

31. Before parting with this judgement, the Court is of the compassionate opinion to give liberty to the revisionist to approach his pension authority along with the website copy of this judgement for release of his retiral benefits, which he is not getting since last more than six years, as is reflected from the written argument.

Order Date :- 17th May, 2025 Abhishek Sri. (Avnish Saxena,J.)