Supreme Court of India
Chandrapal Singh And Ors. vs Maharaj Singh And Anr. on 15 January, 1982
Equivalent citations: AIR 1982 SC 1238, 1982 CriLJ 1731, 1982 (1) SCALE 73, (1982) 1 SCC 466, 1982 (14) UJ 517 SC
Bench: A Varadarajan, D Desai, S M Ali
JUDGMENT

1. A frustrated landlord after having met his Waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the Process of law. The facts when stated are so telling that the further discussion may appear to be superfluous.

2. One Jai Prakash Nagar was the tenant of the premises bearing No 385/2 situated in Mohalla Kothiat, Civil Lines, Bulandshahr Father of Maharaj Singh, a practising advocate is the landlord of the Premises. According to the landlord, tenant Jaiprakash Nagar vacated" the premises on January 2, 1978, and as required by Section 15(2) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, ('Rent Act' for short), gave a notice of the same to the District Magistrate. There is a similar obligation on the landlord and pursuant to this obligation as prescribed in Section 15(1) of the Rent Act, Maharaj Singh also gave intimation of the vacancy to the District Magistrate on January 5, 1978. The Rent Control Inspector made a report on January 7, 1978 that the premises was found locked at the time of his inspection. Amongst others appellant Chandrapal Singh also moved the Rent Control Officer, the delegate of the District Magistrate, for allotment of the premises to him because he was occupying adjacent premises bearing No. 385/1. The proceedings for allotment ended in favour of present appellant Chandrapal Singh on October 22, 1978. Maharaj Singh and his father Dhiraj Singh preferred R.C.R, No. 58/78 before the District Judge, Bulandshahr impleading present appellant 1 Chandrapal Singh being the allottee of the premises. The Fourth Addl. District Judge before whom the matter came up for hearing confirmed the order of allotment but set aside the finding of the Rent Control Officer about the rent of the premises as well as observations about the ownership of the premises. The net result was that the order of allotment in favour of appellant 1 became final.

3. Maharaj Singh son of the landlord filed a criminal complaint in the Court of the Chief Judicial Magistrate, Bulandshahr, against the present appellants alleging that the three appellants had committed offences under Sections 193, 199 and 201 Indian Penal Code. Appellant 1 is the allottee and appellants 2 and 3 are persons who had filed affidavits in the course of the allotment proceedings before the Rent Control Officer in support of the claim for allotment made by appellant 1. It was alleged in the complaint that the premises bearing No 385/2 comprises three rooms which formed the subject-matter of allotment proceedings before the Rent Control Officer and appellant 1 had taken forcible possession of one of the three rooms and the verandah and was in unauthorised occupation and this led to the complainant Maharaj Singh, Advocate, riling the criminal complaint under Section 448/426, I.P.C. which proceeding is pending. It was further alleged that in order to save himself from the criminal prosecution appellant 1 knowingly and intentionally made a false statement that Jai Prakash Nagar whose vacating the premises led to the allotment proceedings was not in possession of three rooms and a verandah but he was in possession of one room, kitchen, a

bathroom, a latrine and a courtyard. According to the complainant Maharaj Singh this was a false statement. In paragraph 8 of the complaint there is a peculiar statement which shows how chagrined the complainant was on the allotment proceedings terminating against him. He has stated in paragraph 8 as under:

That the Rent Control Officer conspired with accused No. 1 and in order to save him of the charges under Section 448/426 and knowing that he was taking a wrong decision, decided without authority that Chandrapal was not in unauthorised possession. This is not true that the portion was rented at Rs. 60/- per month. The Rent Control Officer has decided that the accused Chandrapal is in possession of the upper portion of house No. 385/2 since 1972 and this decision to cause prejudice since this issue was to be decided in the court. Therefore the applicant will submit his case against the Rent Control Officer.

(emphasis ours)

4. In paragraph 10 he stated that the Rent Control Officer does not fall in the definition of a court, and therefore, Section 195, CrPC, 1973 is not attracted. On this complaint filed by Maharaj Singh, the son of the landlord, the learned Chief Judicial Magistrate, Secunderabad, took cognizance of the offences and issued process summoning the appellants to appear before him to answer" charges under Sections 193, 199 and 201 of the Indian Penal Code.

5. The appellants appeared before the learned Chief Judicial Magistrate and moved an application that the complaint filed by Maharaj Singh was incompetent and the Court could not take cognizance of the offences mentioned therein in view of the provision contained in Section 195(1)(b)(i), Cr. P.C., 1973 in the absence of a complaint by the Court before which the offences were alleged to have been committed. The learned Magistrate rejected the application by his order dated August 4, 1980. Thereupon the appellants moved the High Court of Judicature at Allahabad under Section 482, Cr. P.C. invoking the inherent powers of the Court to quash the proceedings, as it constituted an abuse of the process of law. It was contended 15 before the High Court that Section 195(1)(b)(i) Cr. P.C. is attracted and, therefore, the learned Judicial Magistrate was in error in taking cognizance of the offences in the absence of a complaint in writing of the Court before which the offences were alleged to have been com mitted. The High Court was of the opinion that the Rent Control Officer is not comprehended in the extended definition of the expression 'court' as set out in Section 195(3), Cr. P.C. and, therefore, a complaint by the Court is not a pre-condition for taking cognizance of the offences complained of by the complainant. On merits it was held that the learned Magistrate having taken cognizance of the offences as in. his view there was a prima facie case to proceed with the complaint, it was not necessary to quash the proceedings at that stage. Hence this appeal by special leave.

6. The apparent error in the judgment of the High Court may at once be pointed out. The offences complained of, the cognizance of which is taken, are under Sections 193, 199 and 201 of the Indian Penal Code. Section 193 provides punishment for the 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. Sub-para 2 of Section 193 provides for punishment of a person who

intentionally gives or fabricates false evidence in any other case, i.e. in a situation other than the evidence being given in any stage of a judicial proceeding. Section 199 provides punishment for making a false statement in a declaration which is by law receivable as evidence. Section 201 provides punishment for causing disappearance of evidence of commission of an offence or giving false information with the intention of screening the offender.

7. Section 195(1)(b)(i) of the Cr. P.C. may be extracted:

195. (1) No Court shall take cognizance-

(b)(i) 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, when such offence is alleged to have been committed in, or in relation to any proceeding in any Court, or....

except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

Sub-section (3) of Section 195, Cr. P.C. provides that in Clause (b) of Sub-section (I), 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 purpose of the section.

8. Section 34(1) of the Rent Act provides that the District Magistrate, the prescribed authority or any appellate authority shall for the purposes of holding any inquiry or hearing any appeal under Sub-section (2) is important and may be extracted:

The District Magistrate, the prescribed authority or appellate authority, while holding an inquiry or hearing an appeal under this Act, shall be deemed to be a Civil Court within the meaning of Section, 480 and 482 of the Code of Court with in the meaning of Section 480 and 482 of the CrPC, 1898 and any meaning of Section 193 and 228 of Indian Penal Code.

9. Section 15(1) of the Rent Act casts an obligation on the landlord to give an intimation of a vacancy in a building in the circumstances mentioned therein to the District Magistrate. There is a similar obligation under Sub-section (2) of Section 15 on the tenant vacating the premises The expression District Magistrate has been defined Section 3(c) to include an officer authorised by the District Magistrate to exercise, perform and discharge all or any of his powers, functions and duties under the Act. Rent Control Officer is one such officer who is authorised by the District Magistrate to exercise per form and discharge the powers, functions and duties conferred him by Chapter III of the Act which includes Section 15(1) and (2) Therefore the proceeding commencing upon the intimation of vacancy for release or allotment of the premises will be conducted before the Rent Control Officer. Now, Sub-section 21 of Section 34 extracted hereinbefore would show that the expression District Magistrate' which would include any officer authorized by him to exercise, perform and discharge his powers, functions and duties has be deemed to be a civil court within the meaning of Section 480 and 482 of the CrPC, 1898. Section 345 and 346 of the CrPC 1973 are

corresponding to Sections 480 and 482 of the Cr. P.C. 1898. As a corollary it would follow that the Rent Control Officer shall be deemed t be a civil court within the meaning of Sections 345 and 346 of Cr. P.C. 1973 and in view of Sub-section (2) of Section 34 of the Rent Act shall be a civil court for the purpose of Section 193, I.P C Section 195(3) Cr.P.C provides that the expression 'Court' in Section 195(1)(b)(i) will include 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 the section. Section 195(1)(b)(i) provides a precondition for taking cognizance of an offence under Section 193, I.P.C., viz a complaint in writing of the Court. In view of the specific provision made in Sub-section (2) of Section 34 of the Rent Act that for the purposes of Sections 345 and 346, Cr. P.C. Rent Control Officer assuming it to be a Tribunal as held by the Court and not a Court, would be deemed to be a civil court and, therefore, for purposes of Section 193 and 228 I P.C. a fortiori any proceeding before it would be a judicial proceeding within the meaning of Section 193 I.P.C. If, therefore, according to the complainant false evidence was given in a judicial proceeding before a civil court and the persons giving such false evidence have committed an offence under Section 193, I.P.C. in or in relation to a proceeding before a court, no court can take" cognizance of such offence except on a complaint in writing of the court. The grievance is that a false affidavit was filed by the mil ants which was receivable as evidence in the allotment proceedings before the Rent Control Officer which as a Tribunal would be as here in above discussed, comprehended in the expression 'Court' If fake evidence in the form of affidavits filed by the appellants was given before Rent Control Officer, a civil court for the purpose of Section 193 I.P.C. "that being a judicial proceeding Section 195(1)(b)(i) would be attracted. For the purposes of Section 195(1)(b)(i) a complaint by the Court is a pre-condition for taking cognizance of such offence by any criminal court. If this pre-condition is not satisfied the Court will have no jurisdiction to take cognizance. Therefore, apart from the two other offences, namely, one under Section 199 and another under Section 201, the learned Chief Judicial Magistrate, Secunderabad, had no jurisdiction to take cognizance of the offence under Section 193, I.P.C. in the circumstances hereinbefore discussed on the complaint of the complainant. The High Court unfortunately completely overlooked this position. Therefore, at least a part of the complaint is liable to be quashed.

10. As deeming fiction enacted in Sub-section (2) of Section 34 is limited in its operation to Sections 193 and 228 I.P.C. only, it was urged on behalf of the respondent that a complaint by the Court was not necessary at any rate for taking cognizance of offences under Sections 199 and 201, I.P.C, because in any view of the matter according to the respondent though Section 199, I.P.C. is included in Section 195(1)(b)(i), Cr. P.C., Section 201, I.P.C. is not referred to therein and secondly the fiction enacted in Sub-section (2) of Section 34 of the Rent Act does not extend to Section 199, I.P.C. Whether a Rent Control Officer as a tribunal would be comprehended in the expression 'Court' as used in Section 195(1)(b)(i) in view of the extended meaning assigned to the expression by Section 195(3), Cr. P.C. would necessitate a closer examination of some other provisions of the Cr. P.C. and some precedents to which our attention was invited, including the one in Kamlapati Trivedi v. State of West Bengal . We propose not to examine that aspect in this case because we are satisfied, as would be presently pointed out, that invoking the jurisdiction of the criminal court, in the facts and circumstances of this case, was an abuse of the process of law.

11. The premises bearing No. 385/2 was vacated by Jai Prakash Nagar. The premises is situated on the first floor of a building. Pre mises bearing Nos. 385, 385/1 and 385/2 form different portions of the same building. The premises involved in the dispute is one bearing No. 385/2. It is not in dispute that premises bearing No. 385/1 is occupied by Chandrapal Singh, appellant 1. Since 1975 a suit is pending between the father of the complainant Maharaj Singh and Smt. Kripali Devi, wife of Chandrapal Singh, appellant 1, for the sale of the premises. Now, in the allotment proceedings Chandrapal Singh complained that Maharaj Singh has allowed some students to occupy part of the premises. There was some dispute as to the area vacated by Jai Prakash Nagar. Appellant 1 Chandrapal Singh sought allotment of the premises vacated by Jai Prakash Nagar on the ground that he was a tenant in the adjacent premises. Maharaj Singh alleged that Chandrapal Singh was in unauthorised occupation of a portion of the premises vacated by Jai Prakash Nagar. The Rent Control Officer recorded a finding that Maharaj Singh is trying to evict Chandrapal Singh to defeat the suit for sale of the premises. He further recorded a finding that appellant 1 Chandrapal Singh was in occupation of the premises of which he claimed to be a tenant since 1972. He then referred to the size of the family of Chandrapal Singh and after comparing requirements of rival claimants, ultimately held that Chandrapal Singh was entitled to the allotment of the premises vacated by Jai Prakash Nagar. In reaching this conclusion he also 55 recorded two findings, one about the size of the accommodation vacated by Jai Prakash Nagar and the other about the rent payable for the same.

12. In the revision petition filed by the landlord against the order of allotment in favour of appellant 1, three contentions were raised. Firstly, he challenged the allotment order on merits; secondly, he urged that the Rent Control Officer had no jurisdiction to decide the area of the accommodation vacated by Jai Prakash Nagar; and thirdly he contended that the Rent Control Officer had no jurisdiction to determine the rent. The Fourth Additional District Judge who heard the matter rejected the contention on the first point and accepted the second and third contentions. Ultimately he confirmed the order of allotment. While reaching this conclusion he held that there was no dispute between the parties in respect of the portion of premises bearing No. 385 and 385/1 being in possession and tenancy of Chandrapal Singh. He upheld the finding that Chandrapal Singh is entitled to the allotment of the premises No. 385/2. Then there is an observation that the claim of Chandrapal Singh was incorrect to the extent that he was already in possession of one room in the upper storey. At the later stage it was observed that there was no Cogent and documentary or believable evidence on record to hold that Shri Chandrapal Singh was already in possession of one room in upper portion along with ground floor of house No. 385/1 in any manner, and it was concluded that the claim of the appellant 1 that he was in possession of one room in premises No. 385/2 was not correct. However, as stated earlier, he finally upheld the allotment order of premises No. 385/2 in favour of appellant 1 Chandrapal Singh.

13. We have now to examine whether in the background of these facts any criminal court would have entertained a complaint of the landlord under Sections 199 and 201, I.P.C. In the whole complaint there is not the slightest whisper as to what evidence was available which the appellants destroyed. Section 201, I.P.C. provides as under:

201. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender

from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the....

We minutely read line by line the complaint and did not find a single word as to what existing evidence was destroyed by the appellants individually or conjointly in respect of an offence which was already committed with the intention of screening the offender. Unfortunately, the learned Chief Judicial Magistrate appears not even to have read the complaint. Otherwise there is not one word as to what offence which he found appeared to have been committed in respect of which the evidence was destroyed or in respect of which a false information 45 was given. Therefore, on the averments of the complainant himself in the complaint no court could have taken cognizance of an offence under Section 201, I.P.C. The High Court did not examine the matter from this angle. The complaint, therefore, in respect of an offence under Section 201, I.P.C. is liable to be quashed on the ground that there is not even-the slightest allegation to constitute an offence except mentioning number of the section of the Penal Code.

14. That leaves for our consideration the alleged offence under Section 199. Section 199 provides punishment for making a false statement in a declaration which is by law receivable in evidence. We will assume that the affidavits filed in a proceeding for allotment of premises before the Rent Control Officer are receivable as evidence. It is complained that certain averments in these affidavits are false though no specific averment is singled out for this purpose in the complaint. When it is alleged that a false statement has been made in a declaration which is receivable as evidence in any Court of Justice or before any public servant or other person, the statement alleged to be false has to be set out and its alleged falsity with reference to the truth found in some document has to be referred to pointing out that the two situations cannot co-exist, both being attributable to the same person and, therefore, one to his knowledge must be false. Rival contentions set out in affidavits accepted or rejected by courts with reference to onus probandi do not furnish foundation for a charge under Section 199, I.P.C. To illustrate the point, appellant 1 Chandrapal Singh alleged that he was in possession of one room forming part of premises No. 385/2. The learned Additional District Judge after scrutinising all rival affidavits did not accept this contention. It thereby does not become false. The only inference is that the statement made by Chandrapal Singh did not inspire confidence looking to other relevant evidence in the case. Acceptance or rejection of evidence by itself is not a sufficient yardstick to dub the one rejected as false. Falsity can be alleged when truth stands out glaringly and to the knowledge of the person who is making the false statement. Day in and day out, in courts averments made by one set of witnesses are accepted and the counter averments are rejected. If in all such cases complaints under Section 199, I.P.C. are to be filed not only there will open up floodgates of litigation but it would unquestionably be an abuse of the process of the Court. The learned Counsel for the respondent told us that a tendency to perjure is very much on the increase and unless by firm action courts do not put their foot down heavily upon such persons the whole judicial process would come to ridicule. We see some force in the submission but it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court. Complainant herein is an Advocate. He lost in both courts in the rent control proceedings and has now rushed to the criminal court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background

is an abuse of the process of law and the High Court rather glossed over this important fact while declining to exercise its power under Section 482, Cr. P.C.

15. We are, therefore, of the view that the learned Chief Judicial Magistrate, Secunderabad, ought not to have taken cognizance of the proceedings for reasons herein indicated in respect of different offences. We consider it to be a fit case to invoke jurisdiction under Section 482, Cr. P.C, 1973. We accordingly allow this appeal, set aside the order of the High Court and quash the proceedings before the learned Chief Judicial Migistrate, Secunderabad. We are not inclined to make any order in respect of costs.