

Sh. Narendra Kumar Srivastava vs The State Of Bihar on 4 February, 2019

Equivalent citations: AIR 2019 SUPREME COURT 2675, 2019 (3) SCC 318, AIRONLINE 2019 SC 590, 2019 CRI LJ 3310, (2019) 195 ALLINDCAS 163 (SC), (2019) 106 ALLCRIC 996, (2019) 195 ALLINDCAS 163, (2019) 1 CGLJ 391, (2019) 1 CRILR(RAJ) 174, (2019) 1 CRIMES 49, (2019) 1 PAT LJR 577, (2019) 2 ALD(CRL) 285, (2019) 2 ALLCRILR 121, (2019) 2 CAL LJ 18, (2019) 2 GUJ LR 1480, (2019) 2 SCALE 591, 2019 (2) SCC (CRI) 221, 2019 (4) KCCR SN 271 (SC), (2019) 74 OCR 34, 2019 CALCRILR 4 58, 2019 CRILR(SC MAH GUJ) 174, 2019 CRILR(SC&MP) 174, AIR 2019 SC(CRI) 1066

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Bench: S. Abdul Nazeer, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 211 OF 2019

SH. NARENDRA KUMAR SRIVASTAVA

... APPELLANT

VERSUS

THE STATE OF BIHAR & ORS.

... RESPONDENTS

JUDGMENT

S.ABDUL NAZEER, J.

1. We have heard the learned counsel for the parties.

2. This appeal is directed against the judgment and order dated 30.03.2017 in Criminal Revision No. 111 of 2017, whereby the High Court of Judicature at Patna has allowed the revision petition filed by the respondent Nos. 2 to 4 and set aside the order dated 22.12.2016 passed by the learned Assistant Chief Judicial Magistrate VII, punishable under Section 193 of the Indian Penal Code, 1860 (for short, 'the IPC') on the basis of a private complaint filed by the appellant.

3. Respondent Nos. 2 to 4 are the officials of Doordarshan and All India Radio. The appellant had joined the Doordarshan Kendra, Motihari, as an Engineering Assistant in the pay scale of Rs.1400/- to Rs.2600/- It was contended that the pay scale of Engineering Assistants was revised from Rs.2000/- to Rs.3000/- with effect from 01.01.1986, by the Ministry of Information and

Broadcasting by its decision dated 15.05.1995. The pay scale of Senior Engineering Assistant was revised from Rs.2000/- to Rs.3275/- with effect from 01.01.1986. It is his case that replacement pay scale of all the categories, with effect from 01.01.1996, was fixed at Rs.6500/- to Rs.10,500/- The Employees Association of the concerned cadre, upon coming into force of Assured Career Progression (ACP) scheme, had represented for grant of 1 st ACP in the pay scale of Rs. 8000/- to 13,500/- which was not being allowed, which led to the filing of an application before Central Administrative Tribunal, Patna Bench (for short 'the CAT'). This gave rise to O.A. No. 514 of 2002. The said O.A. was allowed by the CAT, by an order dated 07.09.2009.

4. The Union of India challenged the said order by filing a writ petition before the High Court. The High Court allowed the writ petition with an observation that no generalized direction could be given for the grant of ACP and the ACP has to be granted on individual basis. The appellant, thereafter, represented before the competent authority for grant of 1st ACP. On refusal, he filed O.A. No.173 of 2009 before the CAT, which was dismissed on 13.02.2013. The appellant, thereafter, approached the High Court by filing a writ petition CWJC No. 2797 of 2014, which was disposed of by an order dated 29.06.2014, with a direction to the respondents therein to pass appropriate order on the representation filed by the appellant. Alleging non-compliance of the said order, the appellant filed a contempt petition before the High Court, which gave rise to MJC No.2912 of 2015.

5. In the petition alleging contempt, it was contended that in the contempt case, the respondents filed a show-cause showing compliance of the order dated 29.06.2014, and accordingly, the contempt case was dropped with liberty to the appellant to challenge the order passed in compliance of the court's directive before an appropriate forum. Instead of challenging the said order, the appellant filed a private complaint against respondent Nos. 2 to 4 before the Assistant Chief Judicial Magistrate-VII, Motihari alleging commission of offence punishable under Section 193 read with Section 34 of the IPC alleging that because of the false and wrong statement made by the respondents in their show-cause affidavit, the High Court dropped the contempt case. The Magistrate by an order dated 22.12.2016 took cognizance of the same and summoned respondent Nos. 2 to 4.

6. The respondent Nos. 2 to 4 challenged the said order of the Magistrate before the High Court. As noticed above, the High Court has allowed the criminal revision petition by its order dated 30.03.2017.

7. Learned counsel for the appellant submits that in the contempt petition filed by the appellant, the respondents had filed false affidavits prepared/forged outside the court. On the basis of the false affidavits, the High Court dropped the contempt case. Therefore, the appellant filed a complaint before the Magistrate under Section 193 of the IPC against the respondent Nos. 2 to 4. It is argued that it was not mandatory to obtain prior sanction for filing a private complaint under Section 193 of the IPC and that the complaint filed by the appellant was maintainable. In this connection he has relied on a decision of this Court in Sachida Nand Singh and Anr. v. State of Bihar and Anr., (1998) 2 SCC

8. On the other hand, learned counsel appearing for the respondents, submits that the punishment for offence giving false evidence in judicial proceedings is stipulated in Section 193 of the IPC and the law governing taking of the cognizance of such an offence is contained in Section 195 of the Cr.P.C. Section 195 of the Cr.P.C. puts a clear bar on taking of cognizance by a Court, of an offence punishable under Section 193 of the IPC, unless it is on a complaint in writing of the Court or such officer of the Court as that Court may authorize in writing in this behalf, in relation to a judicial proceeding of which Court, the offence is alleged to have been committed. Since no such complaint has been made, the High Court was justified in quashing the order of the Magistrate. In this connection, reliance is placed on the judgment of this Court in *M.S. Ahlawat v. State of Haryana and another*, (2000) 1 SCC

278.

9. Having regard to the contentions urged, the question for consideration is whether the Magistrate was justified in taking cognizance of an offence punishable under Section 193 of the IPC on the basis of a private complaint?

10. Before proceeding further, it is important to peruse the relevant sections of the IPC and Cr.P.C. Section 193 of IPC reads as follows:

"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 judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence."

11. Section 195 of the Cr.P.C. expressly states as follows:

"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, 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 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 ordinary 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.” (emphasis supplied)

12. It is clear from sub-section (1)(b) of Section 195 of the Cr.P.C. that the section deals with two separate set of offences:

(i) of any offence punishable under Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 of IPC, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court; [Section 195(1)(b)(i)]

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of IPC, 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.

[Section 195(1)(b)(ii)].

13. On the reading of these sections, it can be easily seen that the offences under Section 195(1)(b)(i) and Section 195(1)(b)(ii) are clearly distinct. The first category of offences refers to offences of false evidence and offences against public justice, whereas, the second category of offences relates to offences in respect of a document produced or given in evidence in a proceeding in any court.

14. Section 195 of the Cr.P.C. lays down a rule to be followed by the court which is to take cognizance of an offence specified therein but contains no direction for the guidance of the court which desires to initiate prosecution in respect of an offence alleged to have been committed in or in relation to a proceeding in the latter court. For that purpose, one must turn to Section 340 which requires the court desiring to put the law in motion to prefer a complaint either suo motu or an application made to it in that behalf.

15. Section 340 of the Cr.P.C. reads as follows:

“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 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 195. (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[or by such officer of the Court as the Court may authorise in writing in this behalf].

(4) In this section, “Court” has the same meaning as in Section 195.”

16. Section 340 of Cr.P.C. makes it clear that a prosecution under this Section can be initiated only by the sanction of the court under whose proceedings an offence referred to in Section 195(1)(b) has allegedly been committed. The object of this Section is to ascertain whether any offence affecting administration of justice has been committed in relation to any document produced or given in evidence in court during the time when the document or evidence was in custodia legis and whether it is also expedient in the interest of justice to take such action. The court shall not only consider prima facie case but also see whether it is in or against public interest to allow a criminal proceeding to be instituted.

17. This Court in *Chajoo Ram v. Radhey Shyam*, (1971) 1 SCC 774 at page 779, held that the prosecution under Section 195 could be initiated only by the sanction of the court and only if the same appears to be deliberate and conscious. It emphatically held as under:

“7. The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be *prima facie* case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge.....”

18. In *Santokh Singh v. Izhar Hussain and Anr.*, (1973) 2 SCC 406, this Court has held that every incorrect or false statement does not make it incumbent on the court to order prosecution. The Court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. The court orders prosecution in the larger interest of the administration of justice and not to gratify the feelings of personal revenge or vindictiveness or to serve the ends of a private party. Too frequent prosecutions for such offences tend to defeat its very object. It is only in glaring cases of deliberate falsehood where conviction is highly likely that the court should direct prosecution.

19. This Court in *M.S. Ahlawat* (supra) has clearly held that private complaints are absolutely barred in relation to an offence said to have been committed under Section 193 IPC and that the procedure prescribed under Section 195 of the Cr.P.C. are mandatory. It was held that:

"5. Chapter XI IPC deals with “false evidence and offences against public justice” and Section 193 occurring therein provides for punishment for giving or fabricating false evidence in a judicial proceeding. Section 195 of the Criminal Procedure Code (CrPC) 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 CrPC 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 (sic) to exercise judicial discretion to order prosecution only in the larger interest of the administration of

justice.

6. Section 340 CrPC prescribes the procedure as to how a complaint may be preferred under Section 195 CrPC. While under Section 195 CrPC it is open to the court before which the offence was committed to prefer a complaint for the prosecution of the offender, Section 340 CrPC prescribes the procedure as to how that complaint may be preferred. Provisions under Section 195 CrPC are mandatory and no court can take cognizance of offences referred to therein (sic). It is in respect of such offences the court has jurisdiction to proceed under Section 340 CrPC and a complaint outside the provisions of Section 340 CrPC cannot be filed by any civil, revenue or criminal court under its inherent jurisdiction."

(emphasis supplied)

20. As already mentioned, clauses under Section 195(1)(b) of the Cr.P.C. i.e. sub-section 195(1)(b)(i) and sub-section 195(1)(b)(ii) cater to separate offences. Though Section 340 of the Cr.P.C. is a generic section for offences committed under Section 195(1)(b), the same has different and exclusive application to clauses (i) and (ii) of Section 195(1)(b) of the Cr.P.C.

21. In Sachida Nand Singh (supra) relied on by the learned counsel for the appellant, this Court was considering the question as to whether the bar contained in Section 195(1)(b)(ii) of the Cr.P.C. is applicable to a case where forgery of the document was committed before the document was produced in a court. It was held:

"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?

xxx xxx xxx

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."

22. In Sachida Nand Singh (supra), this Court had dealt with Section 195(1)(b)(ii) of the Cr.P.C unlike the present case which is covered by the preceding clause of the Section. The category of offences which fall under Section 195(1)(b)(i) of the Cr.P.C. refer to the offence of giving false evidence and offences against public justice which is distinctly different from those offences under Section 195(1)(b)(ii) of Cr.P.C, where a dispute could arise whether the offence of forging a document was committed outside the court or when it was in the custody of the court. Hence, this decision has no application to the facts of the present case.

23. The case in hand squarely falls within the category of cases falling under Section 195(1)(b)(i) of the Cr.P.C. as the offence is punishable under Section 193 of the IPC. Therefore, the Magistrate has erred in taking cognizance of the offence on the basis of a private complaint. The High Court, in our view, has rightly set aside the order of the Magistrate. However, having regard to the facts and circumstances of the case, we deem it proper to set aside the costs imposed by the High Court.

24. The appeal is disposed of accordingly.

.....J. (A.K. SIKRI)J. (S. ABDUL NAZEER) New Delhi;

February 04, 2019.