

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.123 OF 2023

ANTHONY ROQUE DSOUZA,
Indian National, Son of Florence
D'Souza Aged 65 years of age, Married,
Pvt. Service, Resident of H.No.63,
Arpora, Bardez Goa.

... PETITIONER

Versus

1. STATE OF GOA, Thr. Public
Prosecutor, High Court of Bombay at
Goa, Porvorim-Goa.

2. POLICE INSPECTOR, Mapusa
Police Station, Mapusa-Goa.

3. MR. MERWYN GERARD
MIRANDA, Son of Late Jose Antonio
Miranda @ Joseph Miranda, Aged 87
Years, Indian National, Resident of C-2,
Trinora Apartments, Hellodoro, Salgado
Road, Panaji City, Tiswadi, North Goa,
Goa.

... RESPONDENTS

Mr D. Zaveri with Mr N. Govekar, Advocates *for the Petitioner.*

Mr S. G. Bhobe, Public Prosecutor *for the State.*

Mr Allan F. C. Andrade and Mr Mark Valadares h/f Mr Richard
Almeida, Advocates *for the Respondent No.3.*

**CORAM: M.S. SONAK &
VALMIKI SA MENEZES, JJ.**

Reserved on: **5th FEBRUARY 2024**

Pronounced on: **8th FEBRUARY 2024**

JUDGMENT: (Per M. S. Sonak, J.)

1. Heard Mr Dhaval Zaveri with Mr Nehal Govekar for the petitioner, Mr Shailendra G. Bhobe, Public Prosecutor for the State and Mr Allan F. C. Andrade and Mr Mark Valadares h/f Mr Richard Almeida for respondent no.3.

2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

3. This petition seeks quashing of FIR No.178/2023 dated 11.09.2023 registered at the Mapusa Police Station (impugned FIR) inter alia on the following grounds:-

i) That the allegations have predominantly a civil profile and, therefore, the very lodging of the FIR amounts to an abuse of process;

ii) The impugned FIR alleges the forging of some documents by unknown persons, yet the petitioner is sought to be prosecuted for such forgery by invoking Section 34 of the Indian Penal Code (IPC). This, according to the petitioner, is impermissible in law and amounts to an abuse of process;

iii) From the allegations in the complaint, on a demurrer, offences punishable under Sections 193 to 195 of the Code of Criminal Procedure (Cr.P.C.) (both inclusive) in relation to proceedings before the Revenue Court are made out. Therefore, in terms of Section 195(1)(b)(i) of Cr.P.C., no Court is empowered to take cognisance of

such offences except on the complaint in writing of that Court. The impugned FIR seeks to circumvent this embargo under Section 195(1)(b)(i) of Cr.P.C. Accordingly, the impugned FIR deserves to be quashed given the law laid down in paragraph 102 (6) of ***State of Haryana And Ors. v/s. Bhajan Lal And Ors. - 1992 Supp (1) SC 335.***

4. The impugned FIR alleges the following:-

“ On the date, time, place mentioned as above, the above mentioned accused Persons intentionally impersonated the Mr. Jose Miranda @ Joseph Miranda who expired on 25.04.1977 and by forging the signature of Mr. Jose Miranda @ Joseph Miranda on Power of Attorney which is executed on 22.01.2007 in respected of landed property bearing survey No. 71/1 of Village Anjuna, Bardez, Goa admeasuring 10.550 Sq.Mts. and thereafter all accused Persons with their common intention knowingly used, produced the forged document as genuine before the concern authorities to facilitate the documentary transaction of landed property bearing survey No. 71/1 of Village Anjuna, Bardez, Goa and succeeded in transferring the rights of landed property thereby deprived the complainant from enjoying the rights over the landed property and cheated the complainant.

Hence Offence U/Sec. 419, 464, 465, 467, 468, 471, 420 R/W 34 IPC stands registered.

(Detail Complaint Attached)”

5. The main allegation is about the forgery of the signature of one Mr Jose Miranda @ Joseph Miranda, who had admittedly expired on 25.04.1977 on a power of attorney allegedly executed on 22.01.2007 concerning landed property admeasuring 10,550 sq. mtrs., surveyed under No.71/1 of Village Anjuna, Bardez, Goa and using this forged document as genuine before the concerned authorities to facilitate the transfer of this property to the Petitioner. The forged power of attorney purported to confer powers from the dead person, Mr Jose Miranda, to the petitioner's sister. Based on this forged and fabricated document, this sister transferred the said property to the petitioner herein. Hence, the impugned FIR alleges the commission of an offence under Sections 419, 464, 465, 467, 468, 471, 420 r/w 34 of IPC not only against the petitioner but others involved in this *prima facie* fraudulent transaction by invoking Section 34 of IPC.

6. When considering a petition for quashing of an FIR, allegations made in the impugned FIR must be taken at their face value and accepted. It is only if such allegations, even if they are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence which makes out any case against the accused that the impugned FIR can be quashed.

7. Now admittedly, Mr Jose Miranda @ Joseph Miranda had expired on 25.04.1977. Still, after 20 years, i.e. on 22.01.2007, a power of attorney is prepared in late Mr Jose's name purporting to confer powers upon the petitioner's sister to deal with late Jose's landed property admeasuring 10,550 sq. mtrs. at Anjuna, Bardez Goa. Based upon this forged and fabricated power of attorney dated 22.01.2007, late Jose's property is transferred to the petitioner. Though actual forgery is alleged against

unknown persons, the provisions of section 34 of IPC have been invoked. The investigations, therefore, cannot be halted at this stage. The impugned FIR alleges the commission of the other offences directly against the Petitioner.

8. If these allegations are taken at their face value, Mr Zaveri's contention about no offences being made out under Sections 419, 464, 465, 467, 468, 471, and 420 r/w 34 of IPC cannot be accepted. In our judgment, such offences are certainly made out, and there is no case for quashing this FIR and halting the investigations by exercising our powers under Article 226 of the Constitution of India r/w Section 482 of Cr.P.C.

9. The circumstance that the duped parties may have instituted civil proceedings against the petitioner or his sister does not mean that the allegations in the impugned FIR have a predominantly civil profile. Taken at their face value, the allegations certainly have a criminal profile. It is well settled that a transaction may have a civil and a criminal profile. Civil proceedings are usually initiated for the protection of civil and proprietary rights. However, that does not mean that the transaction may not involve a criminal profile or that the criminal proceedings, in such circumstances, must be invariably quashed. If the allegations in the impugned FIR are to be accepted at their face value, as is required at this stage of these proceedings, we cannot agree with Mr Zaveri's contention about the transaction having a predominantly civil profile. There is no abuse of process as alleged, warranting interference with the impugned FIR on this ground.

10. Mr Zaveri's main contention, however, was based on what he describes as the embargo under Section 195(1)(b)(i) of Cr.P.C., which

provides that no Court shall take cognisance of any offence punishable under any of the following Sections of IPC, 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 proceedings in any Court.

11. Mr Zaveri submitted that the allegation in the impugned FIR was that the allegedly forged and fabricated power of attorney was used before the Revenue Court in tenancy proceedings to obtain some favourable orders. He pointed out that against such favourable orders, appeals have already been preferred, inter alia, by the complainant before the Appellate Authorities. He submitted that since the allegations of forgery, fabrication of documents, etc., were “*in relation to*” the proceedings before the Revenue Court, the impugned FIR could not have been registered against the statutory embargo under Section 195(1)(b)(i) of Cr.P.C.

12. Mr Zaveri submitted that the complaint, if at all, could have only been filed by the Court or by the officer of the Court as may be authorised by the Court on its behalf or some other Court to which that Court is subordinate. He submitted that in terms of *Bhajan Lal (supra)*, where there is an express legal bar engrafted in any of the provisions of the Code to the institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party, a case is made out for quashing of the FIR which seeks to evade compliance with the statutory safeguards provided under Section 195 of Cr.P.C.

13. Mr Zaveri submitted that it is not as if the victims of the alleged fraud and fabrication are remediless. He submitted that they had already

invoked the civil remedies available to them. He submitted that it is always open to the victims to request the Revenue Court to file the complaint if it was satisfied about the forgery or fabrication of documents in relation to the proceedings before it. He, therefore, submitted that the impugned FIR was registered in the teeth of express legal bar under Section 195 of Cr.P.C. and further, there were specific remedies available under the Code providing efficacious redress for the grievance of the aggrieved party.

14. Mr Zaveri submitted that his contention based on the embargo under Section 195 of Cr.P.C. was entirely supported by the decision of the Hon'ble Supreme Court in the case of *Bandekar Brothers Private Limited And Anr. v/s. Prasad Vassudev Keni And Ors. - (2020) 20 SCC 1*, which had explained the decision of the Constitution Bench in *Iqbal Singh Marwah v/s. Meenakshi Marwah – (2005) 4 SCC 370*. Mr Zaveri also relied on *Bhima Razu Prasad v/s. State, Rep. By Deputy Superintendent of Police, CBI/SPE/ACU-II – 2021 SCC OnLine SC 210* to explain the expression “*in relation to*” appearing in Section 195(1)(b)(i) of Cr.P.C.

15. Mr Bhobe and Mr Andrade submitted that the offence in this case was committed in 2007 when the power of attorney was executed on 22.01.2007 by forging Mr Jose Miranda's signature, even though Jose Miranda had expired on 25.04.1977. They submitted that at that stage, there was no question of any proceedings before any civil or revenue court, even in contemplation. They submitted that the facts in *Bandekar Brothers Private Limited (supra)* were different and not comparable to those in the present case. They submitted that *Bhima Razu Prasad (supra)*, on careful consideration, goes against the contentions raised by Mr Zaveri. They submit that the matter is covered by the Constitution Bench decision in *Iqbal Singh Marwah (supra)* and Mr Zaveri's contention about *Bandekar*

Brothers Private Limited (supra) laying down some proposition which runs counter to *Iqbal Singh Marwah (supra)* cannot be accepted.

16. Mr Andrade relied on the decision of the Hon'ble Supreme Court in *Ashok Gulabrao Bondre v/s. Vilas Madhukarrao Deshmukh And Ors. - Criminal Appeal No.1931 of 2011 decided on 12.04.2023* to submit that Section 195(1)(b)(ii) of Cr.P.C. would apply only when offences enumerated in the said provisions were committed in respect of a document after it had been produced or filed in evidence during the proceedings before any Court, i.e. during the time when the document was *custodia legis*. Based on all this, Mr Bhobe and Mr Andrade submitted that even this last contention of Mr Zaveri should be rejected.

17. Section 195(1) of Cr.P.C. reads 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, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in 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].”

18. The Constitution Bench, in the case of *Iqbal Singh Marwah (supra)* examined the scheme of the statutory provisions in Section 195(1) of Cr.P.C. and made the following observations in paragraph 10:-

“10. The scheme of the statutory provision may now be examined. Broadly, Section 195 CrPC deals with three distinct categories of offences e which have been described in clauses (a), (b)(i) and (b)(ii) and they relate to (1) contempt of lawful authority of public servants, (2) offences against public justice, and (3) offences relating to documents given in evidence. Clause (a) deals with offences punishable under Sections 172 to 188 IPC which occur in Chapter

*X IPC and the heading of the Chapter is "Of Contempts of the Lawful Authority of Public Servants". These are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b)(i) refers to offences in Chapter XI IPC which is headed as "Of False Evidence and Offences Against Public Justice". The offences mentioned in this clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a court of justice or before a public servant who is bound or authorised by law to receive such declaration, and also to some other offences which have a direct correlation with the proceedings in a court of justice (Sections 205 and 211 IPC). This being the scheme of two provisions or clauses of Section 195 viz. that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court" occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the court. **The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 CrPC. This indicates that clause (b) (ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any court."***

19. *Iqbal Singh Marwah (supra)*, which is a Constitution Bench judgment, in terms, holds that the situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in Court does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 of Cr. P. C. Mr Zaveri's contention that *Bandekar Brothers Private Limited (supra)* takes some view contrary to the law laid down in *Iqbal Singh Marwah (supra)* cannot be accepted. Apart from the circumstance that *Bandekar Brothers Private Limited (supra)* is distinguishable on facts, it is quite inconceivable that the Two Judge Bench in *Bandekar Brothers Private Limited (supra)* would have said something contrary to what was laid down by the Constitution Bench in *Iqbal Singh Marwah (supra)*.

20. In *Bandekar Brothers Private Limited (supra)*, the accused persons were alleged to have given false evidence, forged debit notes and made false entries in books of account, which were produced in four Civil Suits being Suit Nos.7, 8, 14 and 21 of 2000/A in the Civil Court at Bicholim. Accordingly, complaints were filed before the Learned JMFC at Bicholim, urging action. After the witnesses had made various depositions before the Magistrate, an application was made on 09.05.2011 in which the complainants/appellants, relying upon *Iqbal Singh Marwah (supra)*, prayed for the conversion of the complaints to private complaints. After such conversion was allowed, the Magistrate issued a process under Sections 191, 192 and 193 of the IPC against the accused persons.

21. The complainants/ appellants did not file any revision or other proceedings to challenge the issue of process under these sections of IPC. The accused persons, however, filed revision applications against the issue

of process by contending that the bar contained in Section 195(1)(b)(i) of Cr.P.C. could not be circumvented and the complaints read as a whole would clearly show that offences under Sections 191 to 193 of IPC alone were made out, as a result of which the drill under the aforesaid sections of Cr.P.C. would have to be observed. These revision applications were allowed by holding that the bar under Section 195(1)(b)(i) of Cr.P.C. was attracted, and the drill prescribed therein had to be followed. The writ petitions against the orders of the Sessions Court were dismissed on 22.11.2013. Hence the appeals by special leave to the Hon'ble Supreme Court.

22. Before the Sessions Court, the High Court and finally before the Hon'ble Supreme Court, the complainants/appellants contended that apart from the offences under Sections 191 to 193 of IPC, the accused had committed offences under Sections 463, 464, 465, 467, 468, 469, 471, 474, 475 and 477-A of IPC and therefore, the private complaint would be maintainable. On behalf of the accused, it was contended that the complainants/appellants had themselves filed a complaint alleging offences under Sections 191, 192 and 193 of IPC. Further, on behalf of the accused persons, it was pointed out that there was no forgery of the debit notes within the meaning of Sections 463 and 464 of IPC, as the debit noted, even if dishonestly or fraudulently made, had not been made within the intention of causing it to be believed that such debit noted were made by a person whom the person making it knows that it was not made, which was not the case, as the debit notes were made and signed by the accused persons by using their own letterhead and in their own names. It was, therefore, submitted that the forgery sections under the IPC were not even remotely attracted.

23. The Hon'ble Supreme Court, after considering the scheme of Section 195 of Cr.P.C. and several decisions, including *Iqbal Singh Marwah (supra)*, held that the first complaint filed by the complainants/appellants left no manner of doubt that the offences alleged therein attracted the provisions of Sections 191 and 192 of IPC. The Court noted that upon realising the difficulties given the provisions of Section 191(1) of Cr. P.C., the complainants/appellants suddenly changed course and applied to the Magistrate to convert what was a properly drafted application under Section 195 read with Section 340 of Cr.P.C. into a private complaint. The Court held that a reading of the two complaints originally filed left no manner of doubt that they had been drafted keeping the ingredients of Sections 191 and 192 of IPC alone in mind, and the only argument from the complainants/appellants was that since certain debit notes were forged prior to their being introduced in the court proceedings, not only would the ratio in *Iqbal Singh Marwah (supra)* apply, but also that the ingredients of forgery sections of IPC were made out.

24. The Hon'ble Supreme Court, therefore, in the peculiar facts of the *Bandekar Brothers'* case, pointed out that it was important to bear in mind that in genuine cases where the ingredients of forgery as defined in Section 463 of IPC had been made out, a private complainant should not be left remediless, yet it was equally important to bear in mind the admonition laid down in an early judgment in *Basir-ul-Huq v/s. State of West Bengal – AIR 1953 293*, the provisions of Section 195 cannot be evaded by resorting to devices and camouflages.

25. The Hon'ble Supreme Court, after detailed consideration of the forgery provisions, held at paragraph 56 that even if all the averments made in the two complaints originally filed were to be put aside and the Court

were to concentrate only on the debit notes that were said to have been created by the accused persons, it was clear that the debit notes were not false documents under Section 464 of IPC, inasmuch as they had not been made with the intention of causing it to be believed that they were made by or under the authority of some other person. Since this basic ingredient of forgery itself was not made out, none of the offences under the sections in Chapter XVIII of IPC could be said to be even *prima facie* attracted in the facts of the case.

26. Thus, the observations in *Bandekar Brothers Private Limited (supra)* were in the context of the peculiar factual position where the complainants/appellants had themselves filed complaints alleging the commission of offences under Sections 191 to 193 of Cr.P.C. and their belated claim about forgery sections being attracted was found to be meritless, even after taking the allegations in the complaint at their face value. In paragraph 62 of *Bandekar Brothers Private Limited (supra)* again, the Hon'ble Supreme Court, in terms, held that the complaints read as a whole do not make out a case under Sections 463 and 464 of IPC but instead, clearly attract the provisions of Sections 191 and 192 of IPC which were incidentally invoked by the complainants/appellants in their original complaint before the JMFC.

27. Therefore, the observations in *Bandekar Brothers Private Limited (supra)* cannot be read by ignoring the context in which they were made. Besides, based upon such reading, it cannot be said that such observations conflict with or otherwise dilute the law laid down by the Constitution Bench in *Iqbal Singh Marwah (supra)*.

28. In *Union of India And Others v/s. Dhanwanti Devi And Others – (1996) 6 SCC 44*, the Hon’ble Supreme Court has explained that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio, and not every observation found therein is what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved since the generality of the expressions which may be found there is not intended to be the exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein.

29. In *Bhima Razu Prasad (supra)*, the Hon’ble Supreme Court did explain the import of the words “*in relation to*” in Section 195(1)(b)(i) of Cr.P.C. Further, in paragraphs 31 to 33, the Hon’ble Supreme Court considered and distinguished *Bandekar Brothers Private Limited (supra)* in the context of the Constitution Bench decision in *Iqbal Singh Marwah (supra)*.

30. The Hon’ble Supreme Court, in paragraph 31, quoted certain observations from *Bandekar Brothers Private Limited (supra)* and at paragraph 32, noted how the Court proceeded to distinguish between the offence of fabricating false evidence under Sections 192 and 193, IPC and the offence of forgery. The Court noted that the averments made by the appellants in their complaints “*pertained exclusively to giving of false evidence and did not disclose the ingredients of forgery as defined under the IPC. Hence, this Court in Bandekar Brothers upheld the respondents’ contentions, and opined that Iqbal Singh Marwah would not benefit the*

appellants in that case. Even though the false evidence was created outside of the Court, it was by the appellants' own admission, created "in relation to" proceedings before the Court".

31. The observations in paragraphs 41 to 49 in *Bhima Razu Prasad (supra)*, further make it clear that *Bandekar Brothers Private Limited (supra)* did not in any manner dent the law in *Iqbal Singh Marwah (supra)* and that *Bandekar Brothers Private Limited (supra)* was decided in the context of the peculiar facts where the offences under the forgery sections of the IPC were not at all made out and by the complainants/appellants' own admission offences under Sections 192 and 193 of IPC were made out in relation to the Court proceedings.

32. The Court also clarified that in case the bar under Section 195(1)(b) (i) of Cr.P.C. is applied to offences committed during the course of the investigation, the Court may think it fit to wait till the completion of a trial to evaluate whether a complaint should be made or not. Subsequently, the Court may be of the opinion that in the larger scheme of things, the alleged fabrication of evidence during investigation has not had any material impact on the trial and decline to initiate prosecution for the same.

33. The Court held that the investigation agency cannot be compelled to take a chance and wait for the trial court to form its opinion in each and every case. This may give the offender under Section 193 of IPC sufficient time to fabricate more falsehoods to hide the original crime. Further, irrespective of the potential impact that such false evidence may have on the opinion formed by the trial court, the investigating agency has a separate right to proceed against the accused for attempting to obstruct a

fair and transparent probe into a criminal offence. Thus, the Court held that it would be impracticable to insist upon lodging a written complaint by the Court under Section 195(1)(b)(i) of Cr.P.C. in such a situation.

34. Accordingly, the appeals against the judgments which had declined to invoke the so-called embargo under Section 195 of Cr.P.C. were dismissed. Thus, upon careful consideration of *Bhima Razu Prasad (supra)*, Mr Bhobe was justified in contending that this decision assists the case of the prosecution rather than the petitioner.

35. In *Ashok Gulabrao Bondre (supra)*, the appellant had filed a complaint against the respondents alleging that they had committed offences punishable under Sections 191, 192, 196, 463, 464, 465, 467, 470 and 471 read with Section 34 of IPC on the allegations that respondent no.2 Ramprasad Pancheshwar “*had prepared false and forged documents, namely, personal recognisance 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.*” The appellant pleaded that those documents had been eventually filed on record in Criminal Case No.19 of 2003 pending against the appellant before the JMFC, Ramtek.

36. The JMFC dismissed the complaint on 06.11.2004 for non-compliance with the embargo under Section 195 of Cr.P.C. The Sessions Court upheld the JMFC’s order on 14.03.2005 but directed action under Section 340 of Cr.P.C. The High Court dismissed the petition under Section 482 of Cr.P.C. against the Sessions Judge’s order. Hence the appeal before the Hon’ble Supreme Court.

37. The Hon'ble Supreme Court observed that the narrow question that was required to be considered was whether the embargo under Section 195 of Cr.P.C. would be applicable when the allegation that the documents which were sought to be used as evidence already fabricated and forged before filing in evidence. The Court then considered the conflicting views in *Surjit Singh And Ors. v/s. Balbir Singh – (1996) 3 SCC 533* and *Sachida Nand Singh And Anr. v/s. State of Bihar And Anr. - (1998) 2 SCC 493* and the reference decided by the Constitution Bench in *Iqbal Singh Marwah (supra)* and noted that the view taken in *Sachida Nand Singh (supra)* was correct and that the bar under Section 195(1)(b)(i) of 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 the proceedings before any Court, i.e. during the time the document was *custodia legis*.

38. Based upon the above reasoning, the Hon'ble Supreme Court set aside the orders of the Revisional Court and the High Court as not sustainable. The matter was remanded to the JMFC for considering the appellant's complaint on its own merits. Thus, in a case where the allegation was about preparing false and forged documents, namely personal recognisance bond and surety bond in Criminal Case No.19 of 2003, the Hon'ble Supreme Court held that the bar under Section 195(1) of Cr.P.C. would not be attracted where the forgeries had been committed much earlier but produced in the Court at a later stage.

39. Now, returning to the circumstances of the present case, firstly, the allegations in the impugned FIR refer to offences under Sections 419, 464, 465, 467, 468, 471, and 420 r/w 34 IPC. None of these offences are referred to in Section 195(1)(b)(i) of Cr.P.C. Secondly, unlike in the case of

Bandekar Brothers Private Limited (supra), this is not a case where we can, on taking the complaint at its face value, say that none of the forgery or cheating sections under the IPC are attracted. If the allegations in the complaint are taken at their face value, the forgery and cheating sections are attracted, particularly since Section 34 of IPC has been invoked.

40. Further, the offences referred to in the impugned FIR were committed sometime in 2007, beginning with executing a power of attorney by forging Jose Miranda's signature, even though Jose Miranda had expired on 25.04.1977. As noted earlier, this power of attorney purported to confer powers on the petitioner's sister. Based upon this forged document, the petitioner's sister transferred the late Jose Miranda's property to the petitioner, who was her brother. The fact that these documents were later used in the tenancy proceedings does not mean that the offences committed in 2007 were in relation to any proceedings in any Court, as contended by Mr Zaveri.

41. Unlike in the case of *Bandekar Brothers Private Limited (supra)*, where the complainant had himself alleged the commission of offences under Sections 192 and 193 of IPC, in the present case, the petitioner wants us first to hold that the allegations in the complaint spell out a case which only attracts Sections 193 to 196 of IPC to the exclusion of other provisions like forgery or the cheating provisions under the IPC. After we have reached this conclusion (if at all), the petitioner wants us to hold that the bar under Section 195(1)(b)(i) of Cr.P.C. is attracted, and therefore, the impugned FIR must be quashed.

42. We are afraid that, in the facts of the present case and after considering the allegations in the complaint, such an exercise is not

warranted. No case is made out to hold that the allegations in the complaint attracted only the provisions of Sections 193 to 196 of IPC and further that none of the offences referred to in the impugned FIR are made out even after taking the complaint at its face value.

43. For all the above reasons, We dismiss this petition and discharge the Rule in this Petition. There shall be no order for costs.

44. However, we clarify that the observations in this Judgment and Order are for the limited purpose of deciding whether any case has been made out for quashing the impugned FIR. Therefore, none of the observations in this Judgment and Order need influence the trial of the petitioner or other accused persons should the investigating agencies file any final report before the competent Court.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.