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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 138 OF 2018

1. Mr. Aleixo Damiao Gracias, son of Felix Gracias, aged 63 years, business, resident of House No. 267, 3rd Ward, Colva, Salcete, Goa.

2. Mr. Vincent Gracias, son of Felix Gracias, aged 67 years, business, resident of House No. 267, 3rd Ward, Colva, Salcete, Goa. ... Petitioners

Versus

Shri Darwin Benny Cardoso, son of late Alfred Cardoso, aged 43 years, in service, resident of House No. 592, Anthoi, Guirdolim, Post Candor-Goa. ... Respondent

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Mr. Dhaval D. Zaveri with Mr. Sujay Kamulkar, Advocates for the Petitioners.

Mr. Ashwin D. Bhobe with Ms. Shaizeen Shaikh, Advocates for the Respondent.

CORAM: **BHARAT P. DESHPANDE, J.**

RESERVED ON: **10th JUNE 2024**

PRONOUNCED ON: **19th JUNE 2024**

JUDGMENT:

1. Rule. Rule made returnable forthwith. The matter is taken up for final disposal at the admission stage with consent.

2. Heard learned Counsel Mr. Dhaval Zaveri for the Petitioners and Mr. Bhobe appearing with Ms. Shaikh for the Respondent.

3. By way of the present Petition filed under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), the Petitioners are praying for the following reliefs:

> *(A) That this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction, quashing and setting aside the Impugned Order dated 6/4/2018 of the Additional Sessions Judge, South Goa, at Margao ("EXHIBIT A" to the Petition) and consequently the Order dated 27/4/2017 of the Learned Judicial Magistrate, First Class 'C' Court, at Margao of framing charges against the Petitioners and allow Application for Discharge and discharge the Petitioner in the said Criminal case;*
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> *(B) That this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction from this Hon'ble Court of calling the records and proceedings in Criminal Complaint No. 118/P/2015/C before the Learned Judicial Magistrate, First Class 'C' Court, at Margao and upon perusal*

of the same, this Hon'ble Court may be pleased to quash and set aside the Proceedings;

(C) Pending the hearing and final disposal and adjudication of this Criminal Writ Petition, this Hon'ble Court may be pleased to stay of the Proceedings in Criminal Case No.118/P/2015/C;

(D) For ad-interim ex-parte relief in terms of Prayer Clause (C) above;

(E) For such other and further reliefs that this Hon'ble Court deems fit and proper.

4. The Petitioners are the Accused persons in Criminal Case No. 118/P/2015, for the offences punishable under Sections 463, 464, 465, 468, 471 and 420 read with Section 34 of IPC. The Respondent/Complainant filed a complaint before the learned Magistrate against the Petitioners for the above offences, which was registered as Criminal Case No. 118/P/2015. The learned Magistrate took cognizance of the said complaint and then issued process against the Petitioners vide order dated 08.10.2015. The complaint shows that the Complainant is the co-owner of the property bearing Survey No. 82/10 of village Colva, which he inherited by virtue of a sale deed dated 24.03.1981, executed by late Father Jose Salvador da Silva in favour of the Complainant's

mother. Said Father da Silva was the exclusive owner of the said property, who executed a Will in favour of the mother of the Complainant. The complaint further shows that the Accused persons with an intention of claiming the said property, illegally and with a common intention forged a declaration dated 15.10.1979 in connivance with the Notary at Vasco and thereafter, fraudulently and dishonestly used the said forged document with an intention to illegally grab the said property in order to deprive the Complainant of his legitimate rights. The Accused persons filed a Civil Suit in the Court of Margao vide Civil Suit No. 146/2009 and used the said forged document as genuine for grabbing the said property. The Complainant filed his written statement and objected to such a document. An Application was filed for referring the said document to the handwriting expert under Section 45 of the Evidence Act, which was allowed by the Court. The report from the handwriting expert produced before the Civil Court would clearly go to show that the said declaration was not signed by Father da Silva. It is stated that the Accused persons did not challenge such a report from the Expert and thus, it is clear that the declaration is a forged document and the same has been used with dishonest intention to grab the property.

5. The complaint further shows in paragraphs 9 and 10 that the Accused persons were aware of the forensic Expert's report,

which stated that the declaration dated 15.10.1979 was not signed by Father da Silva, however, inspite of the said knowledge, the Petitioners continued to pursue the said Suit based on such declaration. It is stated that the Petitioners had knowledge or reasons to believe that the document was forged and inspite of this fact, they tried to use the same as a genuine document with the intention to cheat and thus, the Accused persons committed offences under Sections 463, 464, 465, 468, 471 and 420 read with Section 34 of IPC.

6. The learned Magistrate after conducting a preliminary inquiry, before framing of charge, came to the conclusion that a case is made out for framing charges against the Accused persons for the said offences. Such an order was passed on 27.04.2017. The Petitioners challenged such order in Revision filed before the Additional Sessions Court, Margao vide Criminal Revision Application No. 37 of 2017. Vide order dated 06.04.2018, the learned Additional Sessions Judge dismissed the said Revision, which is challenged in the present proceedings along with the order passed by the learned Magistrate dated 27.04.2017.

7. Mr. Zaveri would submit that the tenor of the complaint itself would suggest that the Accused persons did forge the

document with the intention to use it as a genuine document in the civil proceedings and thus, the provisions under Section 195 of IPC stands attracted wherein the learned Magistrate is not entitled to take cognizance of such complaint unless the complaint is filed by the Presiding Officer before whom such offence is committed in the proceedings.

8. Mr. Zaveri would submit that no offence of forgery or using a forged document is made out in the matter and therefore, at the most, the offence under Section 191 of IPC could be considered subject to the bar under Section 195. He would submit that the provisions in Chapter XI of IPC deal with false evidence and offences against public justice would apply at the most. Section 191 of the IPC deals with giving of false evidence whereas Section 192 of the IPC deals with fabricating false evidence. He submits that Section 199 of IPC deals with false statements in declaration which is by law receivable as evidence. He submits that the above provisions are wide enough to cover the allegations made in the complaint and the punishment which the Court is empowered to impose is more harsh than the punishment with regard to forgery and fabricating a document. He submits that Chapter XXVI of Cr.P.C. deals with administration of justice wherein an inquiry is necessary upon an Application by the party on the basis of giving false or fabricated evidence.

9. Mr. Zaveri would further submit that Chapter XVIII of IPC deals with offences relating to documents wherein forgery is defined under Section 463 of IPC whereas Section 464 of IPC deals with making of a false document. He submits that considering the averments made in the complaint filed before the learned Magistrate, Section 463 of IPC is not available or attracted, but, Section 192 of IPC is certainly attracted.

10. Mr. Zaveri would submit that once it is observed that Sections 191 and 192 of IPC stand attracted, the bar under Section 195 of IPC comes into play wherein no Court is entitled to take cognizance of any complaint for the offences punishable under Sections 193 to 196 of IPC or the offences punishable under Sections 463, 471, 475 and 476 of IPC, unless the complaint in writing by a public servant concerned is filed. He submits that in the present case, a private complaint is filed by the Respondent, but, it is not maintainable as the learned Magistrate has no jurisdiction to take cognizance of such complaint.

11. Mr. Zaveri while placing reliance in the case of **Iqbal Singh Marwah & Another Vs. Meenakshi Marwah & Another, (2005) 4 SCC 370, Patel Laljibhai Somabhai Vs. The State of Gujarat, 1971 (2) SCC 376, State of Haryana & Others**

Vs. Bhajan Lal & Others, 1992 Supp (1) SCC 335, Bhima Razu Prasad Vs. State, 2021 SCC OnLine SC 210 and Bandekar Brothers Private Limited & Another Vs. Prasad Vassudev Keni & Others, (2020) 20 SCC 1, would submit that the complaint filed and entertained by the Magistrate requires to be dismissed and the orders passed by the learned Magistrate taking cognizance as well as the order of framing of charges, need to be quashed and set aside.

12. Mr. Zaveri would submit that the observations of the Division Bench of this Court in the case of **Anthony Roque D'Souza Vs. State of Goa & Another** [Criminal Writ Petition No. 123 of 2023 decided on 08.02.2024] will not be applicable to the facts and circumstances of the case, as the Petition was filed for quashing of FIR whereas the present Petition is filed on the ground that the learned Magistrate does not have jurisdiction to take cognizance. He submits that both these aspects are separate. In this regard, he placed reliance on the decision of the Apex Court in the case of **Harish Dahiya & Another Vs. State of Punjab & Others, (2019) 18 SCC 69** to buttress his submission that the Petition under Section 482 of Cr.P.C. and its scope are quite different from the Petition filed under Article 227 of the Constitution of India.

13. Per contra, learned Counsel, Mr. Bhobe appearing for the Respondent would submit that the subject complaint is filed against the Accused persons for the offences of forgery and not with regard to Section 192 or 193 of IPC. He submits that the contentions of the Complainant are very clear. The report of the handwriting expert would clearly go to show that the declaration is a forged document and therefore, the offence of forgery stands completed once the document is considered to be forged and executed. He submits that the aspect of subsequent use of such document in any proceedings, would not be important for the purpose of inviting Section 195 of IPC for the simple reason that the offence of forgery stands completed once the document is forged. It is submitted that subsequent use of such document in any proceedings would not attract or debar the Complainant from lodging such complaint so also, the Magistrate from taking cognizance of it.

14. Mr. Bhobe would submit that since the document was forged much prior to using it as a genuine document in the Court, the observations of the Constitutional Bench in the case of **Iqbal Singh Marwah** (supra) stand attracted, which has been considered by the Division Bench of this Court in the case of **Anthony D'Souza** (supra). Mr. Bhobe would submit that the observations in the case of **Anthony D'Souza** (supra) are similar

to the facts and circumstances of the matter. Similar arguments were advanced before the Division Bench including the case laws, which have been cited in this matter. He submits that the decision of the Division Bench, though in case of quashing of FIR under Section 482 of Cr.P.C., would be binding on this Court, and since the same sets of arguments were advanced, it would not matter whether the reliefs claimed in the case of **Anthony D'Souza** (supra) and the reliefs claimed in the present Petition are different. He would further submit that the complaint nowhere says that any offence under Section 192 of IPC or 193 of IPC was committed so as to attract Section 195 of IPC in the matter. Finally, Mr. Bhobe would submit that the learned Magistrate after a detailed inquiry found that there is sufficient material to frame charges, which is confirmed by the learned Sessions Judge in the Revision Petition. It is submitted that such observations of the two Courts below need not be disturbed in the present Petition as there are no submissions of any perversity or otherwise by the Courts below in the said impugned orders.

15. The rival contentions fall for determination:

16. The first submission of Mr. Zaveri that the observations of the Division Bench in the case of **Anthony D'Souza** (supra) cannot be looked into as the said Petition was filed for quashing of

FIR whereas the present Petition is filed challenging the order of cognizance and the order of framing charge, will have to be rejected for the simple reason that the Apex Court in the case of **Bhajan Lal** (supra) and more specifically in paragraph 102 carved out the circumstances, in which, the Court can exercise it extraordinary powers under Article 226 of the Constitution of India or its inherent powers under Section 482 of Cr.P.C. Clause 6 of paragraph 102 specifically read thus:

> *"(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code."*

17. Mr. Zaveri has himself relied on the above criteria in the case of **Bhajan Lal** (supra) to submit that the learned Magistrate is not empowered even to take cognizance and therefore, Clause 6 of paragraph 102 stands attracted.

18. In the case of **Bhajan Lal** (supra), the entire discussion is with regard to the powers under Section 482 of Cr.P.C. together with Article 226 of the Constitution of India and the circumstances in which such extraordinary powers or inherent powers could be used for quashing of the FIR, the complaint or the proceedings.

19. The prayers in the present proceedings are not different from the aspect of quashing of the criminal complaint. The Petitioners have specifically prayed that the impugned order dated 27.04.2017 and consequently, the order dated 06.04.2018 be quashed and set aside and the Petitioners be discharged from the said criminal case. The basic grounds claimed in the Petition is that the Magistrate is not empowered even to take cognizance of such a complaint, which squarely covers Clause 6 of paragraph 102 of **Bhajan Lal** (supra). Therefore, the contention that even if the observations of the Division Bench in the case of **Anthony D'Souza** (supra) are on similar lines or on similar grounds the same cannot be looked into, cannot be accepted.

20. Besides, it is found that the arguments which are advanced in the present matter are the same which were advanced in the case of **Anthony D'Souza** (supra) for the purpose of quashing of FIR/complaint. Thus, the contention that the observations of the Division Bench cannot be looked into for deciding the present Petition, needs to be rejected.

21. Reverting back to the complaint, which is filed by the Respondent, it is clear from the language therein that such complaint is filed for the offences punishable under Sections 463,

464, 465, 468, 471 and 420 read with Section 34 of IPC. There is no mention of any other section of IPC or otherwise. The complaint itself states that the Accused persons had an intention to claim the property illegally and accordingly, forged the document dated 15.10.1979. The Civil Suit was filed in the year 2009 for declaration bearing Regular Civil Suit No. 146 of 2009.

22. In the Civil Suit, Plaintiff No. 1 averred that the property bearing Survey No. 82/10 at Colva was earlier belonging to Father da Silva being one of the co-owners, who approached Plaintiff No. 2 for a loan in order to maintain the said property and at that time, prepared a declaration in the presence of the Notary that the amount shall be repaid in three years. Plaintiff No. 1 remains in possession of the said property who used to tie cattle in the said property. Said Father da Silva failed to repay the said loan within the stipulated time and as such, as per the declaration, Plaintiff No. 2 became the co-owner. The suit was filed for grant of permanent injunction against the Defendants and also to declare Plaintiff No. 2 as a successor having right and share of late Father da Silva on the basis of the declaration.

23. Thus, there is a huge gap from the time of executing such a declaration dated 15.10.1979 till the filing of the suit in the year 2009. Accordingly, it is clear that the contention cannot be

accepted that the declaration was prepared only for the purpose of using it in the proceedings for the purpose of grabbing the property. Since the Civil Suit was filed in the year 2009 claiming therein that the Defendants on the basis of a sale deed dated 01.10.2010 are trying to interfere with the possession of the Petitioners, would clearly go to show that the declaration is allegedly forged in the year 1979 itself, by forging the signature of Father da Silva and accordingly, the offence under Section 463 of IPC stands completed once the document is forged.

24. The fact remains that after the filing of the Civil Suit wherein the declaration of the year 1979 was produced, the Defendants filed the written statement and the counterclaim wherein they alleged that no such declaration was executed by Father da Silva and that such declaration is a forged document. An Application was also moved before the learned Civil Court under Section 45 of the Evidence Act seeking permission to refer the said declaration to the handwriting expert in order to verify the genuineness of the signature of Father da Silva. The learned Civil Court vide order dated 24.11.2010 allowed such an Application and referred such declaration along with the admitted signature of Father da Silva to the Central Forensic Science Laboratory (CFSL), Hyderabad.

25. A report from the CFSL, Hyderabad was received by the Civil Court dated 13.04.2011 opines that the person who wrote the red enclosed signature stamped and marked as A1 to A3 did not write the red enclosed signature similarly stamped and marked Q1. The report clearly shows that the declaration has no genuine signature of Father da Silva and therefore, it is considered to be a forged document. This report was received in the Civil Court in the month of April 2011. However, the Petitioners being one of the Plaintiffs continued with the said suit on the basis of such declaration even though it was found to be a forged document. The evidence of Plaintiff No. 2-Vincent Gracias was recorded before the Civil Court and he even produced the said declaration which is clear from the deposition placed on record at pages 95 and 95A. It is a matter of record that the said Civil Suit along with the counterclaim has been dismissed by the Civil Court and no party has challenged it. It is also a matter of record that the Petitioners did not object to the CFSL report, which shows that the declaration is a forged document.

26. With these observations of the matter in hand, the complaint was filed before the learned Magistrate in the year 2015. Though there are allegations that the document was forged and subsequently used in the civil proceedings, it is a matter of record

that the declaration was executed somewhere in the year 1979 whereas the Civil Suit was filed in the year 2009 thereby using the said document as a genuine document. Thus, it is clear that the forgery aspect was complained much prior to the filing of the suit. In such circumstances, the observations of the Constitutional Bench in the case of **Iqbal Singh Marwah** (supra) will have to be considered.

27. Mr. Zaveri strenuously urged that the decision in the case of **Iqbal Singh Marwah** (supra) only deals with the provisions of Section 195(1)(b)(ii) of Cr.P.C. In this respect, he would submit that the matter in hand is covered under Section 195(1)(b)(i) of Cr.P.C. and therefore, no Court is empowered to take cognizance of such offence mentioned therein. It is his contention that the offence under Section 193 of IPC punishable for false evidence is more serious and affects the administration of justice as compared to the offence of forgery and using a forged document as genuine.

28. In the case of **Iqbal Singh Marwah** (supra), the Apex Court has observed that there is conflict of opinion between two decisions of an equal Bench consisting of three Hon'ble Judges regarding the interpretation of Section 195(1)(b)(ii) and accordingly, the matter was referred to the Constitutional Bench.

The facts in that matter need to be considered. The parties were real brothers and other relatives of one Mukhtar Singh who died on 03.06.1993. The Probate Case was filed in the Court of District Judge, Delhi claiming that a Will was executed by Mukhtar Singh on 20.01.1993. The said proceedings were contested on the ground that the Will was forged. On an Application, the original Will was produced before the Court. Similarly, an Application was moved before the Court under Section 340 of Cr.P.C. requesting the said Court to file a criminal complaint against the Appellants for forging the Will. Though such Application was pending, in May 1996, a criminal complaint was filed before the learned Chief Metropolitan Magistrate for the offences punishable under Sections 192, 193, 463, 464, 465, 467, 469, 471, 499 and 500 of IPC on the ground that the Will of Mukhtar Singh is a forged and fabricated document. On receipt of the said complaint, the Metropolitan Magistrate observed that the question as to whether the Will was a genuine document or forged one was the issue before the District Court under the Probate proceedings wherein the Application under Section 340 of Cr.P.C. was also filed and thus, the bar under Section 195(1)(b)(ii) of Cr.P.C. operates for taking cognizance. The said complaint was accordingly dismissed by the Magistrate. The Criminal Revision filed against such an order was allowed by the Sessions Court on the ground that the bar under Section 195 of IPC would not be applicable as the

forgery of the document was committed before the said document was produced before the Court. Such order of the Sessions Court was challenged before the High Court by filing a Petition under Section 482 of Cr.P.C., which was dismissed by following the law laid down in the case of **Sachida Nand Singh Vs. State of Bihar, (1998) 2 SCC 493**. Being aggrieved by the said dismissal, the Appellant-Iqbal Singh Marwah approached the Apex Court.

29. The Apex Court in paragraph 5 in the case of **Iqbal Singh Marwah** (supra) discussed about the principle controversy involved in the said matter i.e. interpretation of 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 a Court" occurring in sub-section (1) of Section 195 of Cr.P.C. Considering the observations in the case of **Surjit Singh Vs. Balbir Singh, (1996) 3 SCC 533** and **Sachida Nand Singh** (supra), the Apex Court discussed the entire scheme of Section 195 of Cr.P.C in paragraphs 10 and 11, which read thus:

> *"10. The scheme of the statutory provision may now be examined. Broadly, Section 195 CrPC deals with three distinct categories of offences 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.

11. Section 195(1) mandates a complaint in writing to the court for taking cognizance of the offences enumerated in clauses (b)(i) and (b)(ii) thereof. Sections 340 and 341 CrPC which occur in Chapter XXVI give the procedure for filing of the complaint and other matters connected therewith. The heading of this Chapter is — "Provisions as to Offences Affecting the Administration of Justice". Though, as a general rule, the language employed in a heading cannot be used to give a different effect to clear words of the section where there cannot be any doubt as to their ordinary meaning, but they are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the sections which immediately follow them, as a preamble to a statute may be looked to explain its enactments, but as affording a better key to the constructions of the sections which follow them than might be afforded by a mere

> *preamble. (See Craies on Statute Law, 7th Edn., pp. 207, 209.) The fact that the procedure for filing a complaint by court has been provided in Chapter XXVI dealing with offences affecting administration of justice, is a clear pointer to the legislative intent that the offence committed should be of such type which directly affects the administration of justice viz. which is committed after the document is produced or given in evidence in court. Any offence committed with respect to a document at a time prior to its production or giving in evidence in court cannot, strictly speaking, be said to be an offence affecting the administration of justice."*

30. The Apex Court in the case **Iqbal Singh Marwah** (supra) in paragraph 33 and after discussing the earlier decisions, observed that the case of **Sachida Nand Singh** (supra) has been correctly decided and the view taken therein is a correct view. Section 195(1)(b)(ii) of Cr.P.C. was attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in the proceeding or evidence in any Court i.e. from the time when the document was in *custodia legis*.

31. In **Anthony D'Souza** (supra), this Court after discussing the case of **Iqbal Singh Marwah** (supra) and **Bandekar**

Brothers Pvt. Ltd. (supra) observed that the Constitutional Bench, in terms, holds that the situation or contingency where an offence as enumerated in that 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.

32. In the case of **Bhima Razu Prasad** (supra), the Apex Court expressed the import of the words "in relation to" appearing in Section 195(1)(b)(i) of Cr.P.C. in paragraph 30, which reads thus:

> *"30. This brings us to the phrase "in relation to any proceeding in any court", which appears in Section 195(1)(b)(i)CrPC but is absent in Section 195(1)(b)(ii). It may be argued that this phrase makes the scope of Section 195(1)(b)(i) wider than Section 195(1)(b)(ii). The words "in relation to" under Section 195(1)(b)(i) appear to encompass situations wherein false evidence has been fabricated prior to being produced before a court of law, for the purpose of being used in proceedings before the Court. Therefore, it may not be possible to apply the ratio of Iqbal Singh Marwah (supra) by way of analogy to Section 195(1)(b)(i) in every case."*

33. The Apex Court in **Bhima Razu Prasad** (supra) after referring to the decision in **Bandekar Brothers Pvt. Ltd.**

(supra) and **Iqbal Singh Marwah** (supra), discussed in paragraphs 32 and 33 as under:

> *"32. This Court thereafter proceeded to distinguish between the offence of fabricating false evidence under Sections 192 and 193IPC and the offence of forgery. It 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 (supra) upheld the respondents' contentions, and opined that Iqbal Singh Marwah (supra) 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. Thus, this Court held that:*
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> > *"19. At this stage, it is important to understand the difference between the offences mentioned in Section 195(1)(b)(i) and Section 195(1)(b)(ii)CrPC. Where the facts mentioned in a complaint attract the provisions of Sections 191 to 193IPC, Section 195(1)(b)(i)CrPC applies. What is important is that once these sections of IPC are attracted, the offence should be alleged to have been committed in, or in relation to, any proceeding in any court. Thus, what is clear is that the offence punishable under these sections does not have to be committed only in any proceeding in any court but can also be an offence alleged to have been committed in relation to any proceeding in any court.*

> *22. Contrasted with Section 195(1)(b)(i), Section 195(1)(b)(ii)CrPC speaks of offences described in Section 463, and punishable under Sections 471, 475 or 476IPC, when such offences are alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court. What is conspicuous by its absence in Section 195(1)(b)(ii) are the words "or in relation to", making it clear that if the provisions of Section 195(1)(b)(ii) are attracted, then the offence alleged to have been committed must be committed in respect of a document that is custodia legis, and not an offence that may have occurred prior to the document being introduced in court proceedings. Indeed, it is this distinction that is vital in understanding the sheet anchor of the appellant's case, namely, this Court's judgment in Iqbal Singh Marwah (supra)."*

33. We fully agree with the aforementioned reasoning. The presence of "in relation to" under Section 195(1)(b)(i) means that Iqbal Singh Marwah (supra) would not have blanket application to every case where a complaint is lodged in respect of an offence specified under that section. However, on the facts of Bandekar Brothers (supra), this was not a situation in which the offence complained of did not have a "reasonably close nexus" with the court proceedings. The offence of giving false evidence was committed by the respondents, who were party to the court proceedings, for the purpose of leading the Court to form an erroneous opinion on a point material to the result of the proceedings. Hence it could be said that though the offence was not

committed during the course of the court proceedings, it was certainly committed "in relation to" such proceedings."

34. The Apex Court further in paragraphs 39 and 52 observed thus:

"39. The construction of the words "in relation to" must be controlled by the overarching principle applicable to Section 195(1)(b)CrPC as stated in Patel Laljibhai Somabhai (supra), Sachida Nand Singh (supra), which was affirmed by the Constitution Bench in Iqbal Singh Marwah (supra). That is, even if the offence is committed prior to giving of the fabricated evidence in court, it must have a direct or reasonably close nexus with the court proceedings.

52. The object and purpose of Section 195(1)(b)CrPC must be borne in mind whilst determining whether the fabrication of false evidence during a stage of a judicial proceeding amounts to having made such fabrication in relation to a proceeding before the court. At the cost of repetition, it must be emphasised that Section 195(1)(b) is meant to restrict the right to make complaint in respect of certain offences to public servants, or to the relevant court, as they are considered to be the only party who is directly aggrieved or impacted by those offences. Furthermore, for the purpose of Section 195(1)(b)(i) CrPC, there must be an intention on the part of the

alleged offender to directly mislead the court into forming a certain opinion by commission of offence under Section 193 IPC. Though a criminal investigation is certainly a stage of a judicial proceeding insofar as it may culminate in issue of process and trial against the accused, it would not be a proceeding in relation to a certain court under Section 195(1)(b)(i)CrPC before the court has even taken judicial notice of such investigation. The difference between a "stage" of a judicial proceeding and the judicial proceeding itself must be emphasised in this regard."

35. In **Colgate Palmolive Company & Others Vs. State of NCT of Delhi & Another, 2024 SCC OnLine Del 4196**, the learned Single Judge of the Delhi High Court while considering the provisions of Section 195(1) of Cr.P.C. in respect of the complaint lodged for fabrication of certificate observed that if false document is created outside the Court premises and for the same transaction, the same is produced before the Court as a genuine document, then two such offences cannot be separated and it is not possible to split up such offence and drill under Section 195(1)(b) of Cr.P.C. must be followed.

36. In the case of **Anthony D'Souza** (supra) all the contentions which have been raised by Mr. Zaveri are also found

raised in the present matter, except the fact that now he submits that the case of **Bandekar Brothers Pvt. Ltd.** (supra) is not deviating from the principles laid down by the Constitutional Bench in the case of **Iqbal Singh Marwah** (supra). However, it is his contention that the decision in the case of **Iqbal Singh Marwah** (supra) is not applicable to the matter in hand as it only deals with Clause (b)(ii) of sub-section (1) of Section 195 of Cr.P.C.

37. However, as discussed in detail and explained by the Apex Court in the case of **Bhima Razu Prasad** (supra) as well as the fact that the alleged offence i.e. fabrication of a declaration has not been committed in respect of or in relation to any proceeding in the Court since such document was executed as alleged on 15.10.1979 and this fact has been established only when the document was produced in Civil Suit No. 146 of 2009 i.e. after a period of 30 years and that too by a report of the handwriting expert, it cannot be said that fabrication of such declaration dated 15.10.1979 was committed in or in relation to any proceedings in the Court.

38. It is no doubt true that after a gap of 30 long years, such a document was produced in the Court of law for the purpose of claiming the property and at that time, a plea was raised that the

document needs to be referred to the handwriting expert as the same is a forged document. Thus, the ratio as discussed earlier in **Iqbal Singh Marwah** (supra) as well as in **Bhima Razu Prasad** (supra) would be applicable once it is stated that if the document is fabricated before it is produced in the Court of law, the drill of Section 195(b) of Cr.P.C. is not required to be undergone together with Section 340 of Cr.P.C.

39. In the case of **Anthony D'Souza** (supra) though the Petition was filed under Section 482 of Cr.P.C. for quashing of FIR, the grounds which are now raised for discharge as well as for quashing of the charges framed, are practically the same. Thus, the view taken by the Division Bench of this Court in **Anthony D'Souza** (supra) would be binding and applicable to the matter in hand. It was held in paragraphs 37 and 38 as under:

> *"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."

40. The complaint lodged in the present proceedings would clearly go to show as discussed earlier that the document was forged on 15.10.1979 and thereafter, it was produced in Civil Suit No. 146 of 2009 only with the intention to grab the property. Thus, the complaint would clearly go to show that the allegation regarding the fabrication of a document, forged 30 years prior to

producing it in the Court of law, is raised. It cannot be said that the offence of forgery of a document could be continued till the same was produced in the Court of law. The offence of forgery as alleged is clearly separable from the offence of producing false evidence in the Court of law.

41. Accordingly, no fault could be found out with the observations of the learned Trial Court while taking cognizance and also while directing to frame charge. The Revisional Court confirmed the order of the Trial Court after considering the material placed on record and on conclusion that there is *prima facie* material to frame a charge against the Accused person in respect of the offences. The contentions and the grounds raised in the present Petition are therefore devoid of merits.

42. For all the above reasons, the Petition stands dismissed. Rule stands discharged. However, there shall be no order as to costs.

BHARAT P. DESHPANDE, J.